

EXHIBIT 21

JAMES MONICA

November 29, 2016

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 13-cv07871-FLW-TJB
4

5 KIMBERLEY COLE, ALAN COLE,
6 JAMES MONICA, LINDA BOYD,
7 MICHAEL McMAHON, RAY SMINKEY,
8 JAMES MEDDERS, JUDY MEDDERS,
9 ROBERT PEPERNO, SARAH PEPERNO
10 AND KELLY McCOY, on behalf of
11 themselves and all others
12 similarly situated,

DEPOSITION UPON
ORAL EXAMINATION
OF
JAMES MONICA
VOLUME I

Plaintiffs

vs

NIBCO, INC.,

Defendant

17 T R A N S C R I P T of the
18 stenographic notes of SUSAN GIOFFRE, a Notary
19 Public and Certified Court Reporter of the State
20 of New Jersey, License No. XI001220, taken at the
21 DOUBLE TREE SOMERSET HOTEL, 200 Atrium Drive,
22 Somerset, New Jersey, on Tuesday, November 29,
23 2016 commencing at 8:30 a.m.
24
25

JAMES MONICA

November 29, 2016

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2

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WITNESS NAME

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JAMES MONICA

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1 J A M E S M O N I C A,
2 12 Hillcrest Boulevard, Warren, New
3 Jersey, called as a witness, having
4 been first duly sworn according to
5 law, testifies as follows:
6

7 DIRECT EXAMINATION BY MS. STEPHENS:
8

9 Q. Please state your name for the record.

10 A. James Martin Monica.

11 Q. And Mr. Monica, you understand that
12 today you're under oath?

13 A. Yes, I do.

14 Q. So it's as if we're sitting in front
15 of a judge and jury today in this deposition.

16 A. Yes, I understand that.

17 Q. I understand you're an attorney, sir?

18 A. Yes, I am.

19 Q. And what state are you admitted to
20 practice in?

21 A. I am currently out of practice, but I
22 was admitted in the state and federal courts of
23 New Jersey and the Third Circuit Court of
24 Appeals.

25 Q. Are you currently employed as an

1 attorney?

2 A. No. My title does not require me to
3 be an attorney, so I would say no.

4 I do serve legal capacities. I'm a
5 labor attorney.

6 Q. Let's back up. Let's take it a piece
7 at a time.

8 A. It's a complicated answer to a simple
9 question.

10 Q. Sure. Let's go over the ground rules
11 of a deposition. I know it's probably unusual
12 for an attorney to sit on the other side of this
13 room, but as you know, the court reporter here is
14 taking down everything we say, and it will be
15 helpful if you allow me to finish my questions
16 and I allow you to finish your answers, so I will
17 try not to interrupt you like I just did, but I
18 think, for the sake of clarity, that was helpful
19 in that instance.

20 The other important thing to remember
21 is that we need verbal answers from you, so, you
22 know, shaking your head or nodding your head
23 can't be taken down by the court reporter
24 accurately.

25 So what I'd like -- you know, I might

1 follow up a question with, you know, "Is that a
2 yes" or "Is that a no?"

3 Please don't think that I'm trying to
4 be adversarial with that, but I just want to make
5 sure we have a clear record.

6 Is that fair?

7 A. I understood that.

8 Q. If you don't understand a question
9 today, please let me know or ask me to restate or
10 I'll try to frame it in a way that you understand
11 the question.

12 Is that fair?

13 A. Um-hum, yes.

14 Q. And also, if you answer a question
15 that I asked you, I'm going to assume that you
16 did understand it.

17 Is that fair?

18 A. Yes.

19 Q. Back to my -- what we were talking
20 about, who is your current employer?

21 A. Penske Truck Leasing, Co., LP.

22 Q. And what's your title there?

23 A. Director of labor relations.

24 Q. Now, you were explaining that there's
25 some legal aspects of that job, but it doesn't

1 require you to have an active license.

2 Is that correct?

3 A. That's correct. I am a labor
4 attorney, so my practice is in front of the
5 National Labor Relations Board.

6 If I do any type of litigation which
7 does not require you to be current with your
8 licensing or anything like that, and most of my
9 job is day-to-day counseling, employee-relations
10 related, so I do not appear in federal or state
11 court.

12 Q. Okay.

13 A. I am not a litigator.

14 Q. Have you taken depositions before?

15 A. I have, yes.

16 Q. Have you ever had your deposition
17 taken?

18 A. No.

19 Q. So this is a new experience for you?

20 A. Yes.

21 Q. What year did you graduate from law
22 school?

23 A. 2006.

24 Q. And then after you graduated from law
25 school, what did you do after law school?

1 A. I started in a commercial litigation
2 firm specializing in construction law.

3 It was a law firm that I had interned
4 with while I was in law school, and that was my
5 first job out of school. I practiced there for
6 about a year as an attorney.

7 Q. What's the name of that firm?

8 A. Peckar & Abramson.

9 Q. Where is that located?

10 A. River Edge, New Jersey.

11 Q. And what did you do after you
12 practiced at that firm for about a year?

13 A. I moved to another law firm called
14 Kroll Heineman.

15 Q. How do you spell Kroll?

16 A. K-r-o-l-l.

17 Q. Thank you.

18 A. And I practiced there for a little
19 under five years.

20 Q. Were you doing construction law again,
21 or what kind of law were you practicing?

22 A. Plaintiff and union side labor law and
23 litigation.

24 Q. So if my math is correct, that takes
25 you up to about 2012. Is that correct?

1 A. Yes.

2 Q. So what did you do after you practiced
3 at your second law firm?

4 A. I went to another law firm, Littler
5 Mendelson, where I practiced labor law on behalf
6 of management.

7 Q. And then after Littler, what did you
8 do?

9 A. I am in my current employment at
10 Penske.

11 Q. When did you start at Penske?

12 A. January 25, 2016.

13 Q. So you've been there almost a year?

14 A. Yes.

15 Q. Are you taking any medications or do
16 you have anything going on in your life that
17 might prevent you from giving me full and
18 complete answers today?

19 A. No.

20 Q. What did you do to prepare for today's
21 deposition?

22 A. I spoke with my attorney.

23 Q. Did you look at any documents?

24 A. I did.

25 Q. What documents did you look at?

1 A. I looked at the deposition notice for
2 today, I looked at the complaint that I filed
3 against my plumber, Richard Roman, I looked at a
4 few pictures that I took, and that's about it as
5 far as documents go.

6 Q. Did you talk to anyone other than your
7 attorney about today's deposition?

8 A. No.

9 Q. So, for instance, at your work you
10 might have told someone "I've got something else
11 going on," but didn't talk to anybody about what
12 you were going to testify about?

13 A. Correct.

14 Q. Just to make sure we're on the same
15 page today, I believe you understand I represent
16 NIBCO, correct?

17 A. I understand that.

18 Q. Okay. And you're familiar with the
19 term PEX, P-E-X?

20 A. Yes.

21 Q. And that's -- I think we both
22 understand that that's a plastic tubing that's
23 used in plumbing of homes.

24 Now, the term "tubing" and the term
25 "piping" are sometimes used to describe it, and I

1 might use them interchangeably today.

2 I'll try to be consistent and use the
3 word "tubing," but if I say "piping," you'll
4 understand I mean the same type of thing?

5 A. Yes.

6 Q. Also, we will use the term "fittings"
7 today. And do you understand that fittings are
8 items or products that are used to fit together
9 pieces of piping in a plumbing system?

10 A. I understand that.

11 (Defendant's Amended Notice of
12 Deposition of James Monica is received and
13 marked as Exhibit Monica-1 for
14 Identification.)

15 Q. I'm going to hand you what's been
16 marked Monica Exhibit 1.

17 Take a glance at that and let me know
18 if you recognize it.

19 (Witness reviewing exhibit.)

20 A. I do recognize this.

21 Q. And is this the deposition notice that
22 you reviewed as part of your preparation for
23 today?

24 A. Yes, it is.

25 Q. And this states that as we're sitting

1 here starting on November 29, 2016 starting at
2 8:30 we're having your deposition.

3 Is that correct?

4 A. You are correct.

5 Q. Now, on the last page there are
6 several various firms listed.

7 Now, I think some of these people may
8 have changed firms, but a lot of names are the
9 same.

10 When you became involved in this
11 lawsuit, were you in contact originally with one
12 of these particular law firms or individuals
13 associated with those firms?

14 A. Yes.

15 Q. Okay. Which ones?

16 A. Joseph Sauder was my primary point of
17 contact. At the time he was with the law firm of
18 Chimicles & Tekellis.

19 Q. It's still listed there that he was
20 with Chimicles originally, okay?

21 Do you recall when you first came into
22 contact with Mr. Sauder to become part of this
23 lawsuit?

24 A. I could not give you the exact date.
25 I would guess it would be somewhere -- I'm

1 guessing -- guesstimating between 2012 and 2013,
2 possibly, but I don't recall the exact time.

3 Q. Was it before or after you filed a
4 lawsuit against your plumber, Richard Roman?

5 A. It was after, I believe.

6 Q. Do you have a -- have you signed an
7 engagement letter or some sort of retention
8 agreement with your counsel in this lawsuit?

9 A. Yes.

10 Q. What are the terms of that engagement?

11 A. Can you rephrase your question?
12 What do you mean by that?

13 Q. Sure. For example, are there any --
14 does that agreement -- I'm just going to call it
15 an "engagement agreement" for lack of a better
16 term right now -- entitle you to any sort of
17 reward or bonus as a result of the outcome of
18 this case?

19 A. Not that I'm aware of, no.

20 Q. Does it require you to cover the costs
21 of this litigation or is --

22 A. No, it's done on a contingency basis.

23 Q. How did you become involved in this
24 lawsuit; like, how did you find Mr. Sauder?

25 A. After the second or third water leak

1 in my house, one of the plumbers who fixed that
2 leak told me that in his hometown he had heard of
3 a couple who recently bought or built a new house
4 and they used the same NIBCO fittings and tubings
5 that were used in my house, and that their house
6 was somewhere around six months old, and that
7 they had to replace all of the plumbing.

8 And he told me that when he replaced
9 the fittings, that the material that he saw on
10 the inside of the fittings to him did not look
11 like normal wear and tear, that there was
12 something that was probably wrong.

13 So, I started looking around on the
14 internet, Google is where I started, and I saw
15 that there were a few lawsuits that were started
16 against NIBCO, and I came across Mr. Sauder's
17 name as being an attorney and firm that were
18 investigating the potential defects in the NIBCO
19 fittings and tubing.

20 So the short answer to your question
21 is I did internet research and found them on my
22 own.

23 Q. What was the name of this plumber that
24 you spoke to?

25 A. His name is Michael Palazzo.

1 Q. Can you spell that last name, or
2 attempt to?

3 A. P-a-l-a-z-z-o.

4 Q. Do you know where Mr. Palazzo -- does
5 he work for a company?

6 A. He's self-employed; Palazzo Plumbing &
7 Heating.

8 Q. Do you know if he's still in business?

9 A. I do not.

10 Q. Do you know the name of the couple
11 that he told you about?

12 A. No, and he did not either.

13 Q. Did he tell you where that house was
14 located?

15 A. I believe it was in Chatham, New
16 Jersey, but I'm not 100 percent positive.

17 Q. You said he was at your house fixing
18 one of the leaks in your home?

19 A. That's correct.

20 Q. Do you recall the approximate date?

21 A. I would say that would probably be
22 somewhere around 2013.

23 Q. Can you venture a guess as to at least
24 the season, the time of year that that occurred?

25 A. No, I would be guessing. I've had

1 multiple leaks, but I don't recall exactly when
2 that was.

3 Q. Do you have any documents related to
4 that, when Mr. Palazzo came to your house to fix
5 a leak?

6 A. Any documents I had I've given to my
7 attorney.

8 Q. So is that a "No" or a "Yes"?

9 Did you ever get an invoice from
10 Mr. Palazzo?

11 A. I did.

12 Q. And you believe, to the extent that
13 document existed, you gave it to your attorneys.

14 Is that correct?

15 A. Yes. Just so you understand here,
16 when this happened the first time or the second
17 time, I didn't really think too much of it.
18 I didn't think that I would be sitting in this
19 chair here today.

20 So, Mr. Palazzo e-mailed me an
21 invoice. I paid the invoice, and I deleted the
22 e-mail. I mean, we're talking three or four
23 years ago.

24 So, if I had the e-mail -- if I had
25 the invoice, it was given to my attorney and

1 produced. If I don't have it, it's simply
2 because it was a three or four-year old e-mail
3 that I purged.

4 Q. Well, let's unpack that a little bit,
5 Mr. Monica. You're an attorney.

6 Is that correct?

7 A. Yes.

8 Q. I believe you just told me a story
9 about how after this particular leak Mr. Palazzo
10 shared this information with you and you then
11 started Goggling and you found Mr. Sauder, and
12 you believe that you became involved in this
13 lawsuit about 2013, about the same time as this
14 particular leak.

15 So, you just stated to me you didn't
16 think you would become involved in a lawsuit, but
17 it seems, at least around the same time, that you
18 did. Is that correct?

19 A. Those are your words, yes.

20 Q. Well, am I correct or not?

21 Did I not just regurgitate back to you
22 what happened?

23 MR. KENNEY: Objection.

24 A. Yes.

25 Q. Okay. Is there a part of what I just

1 said that you disagree with?

2 A. No.

3 Q. But you still deleted the invoice that
4 was sent to you. Is that correct?

5 A. When I say "deleted," I did not
6 intentionally hit the delete button. It just
7 stayed in my in-box as old e-mail, and as my
8 in-box fills up, older e-mails are purged or
9 whatever Optonline does with that.

10 Q. How did you pay that invoice?

11 A. Either by cash or check, but I
12 couldn't tell you for certain which one.

13 Q. If you paid by check, what bank
14 account would it have come out of?

15 A. Wells Fargo.

16 Q. Do you bank elsewhere?

17 A. I do.

18 Q. Where?

19 A. I don't know why that's relevant.

20 Q. Where? I don't hear an objection.

21 A. Chase.

22 Q. Chase Manhattan?

23 A. Um-hum.

24 Q. Is that a "Yes"?

25 A. Chase Bank.

1 Q. Where else do you bank, Mr. Monica?

2 A. That's it.

3 Q. How about back in 2013 when this
4 occurred, did you have a bank account anywhere
5 else?

6 A. In 2013 I did not have the Chase Bank
7 account. I just had the Wells Fargo account.

8 Q. Do you know how much you paid
9 Mr. Palazzo for that particular repair work?

10 A. Well, Mr. Palazzo fixed more than one
11 of the leaks in my house.

12 Q. That particular one that we're talking
13 about when he came just to visit your house and
14 repair a leak and you had this discussion about
15 NIBCO, that particular visit, do you recall how
16 much you paid him?

17 A. Approximately, \$1,500.

18 Q. And you might have paid that amount in
19 cash?

20 A. Yes.

21 Q. How much cash do you have in your
22 wallet right now?

23 MR. KENNEY: Objection. I don't think
24 that's relevant.

25 MS. STEPHENS: A relevance objection

1 is improper. It's not grounds to not answer
2 a question in a deposition.

3 MR. KENNEY: I disagree.

4 You can answer it if you feel
5 comfortable.

6 A. None.

7 Q. Have you tried to determine exactly
8 how much you paid Mr. Palazzo for that particular
9 visit?

10 A. Yes.

11 Q. Okay. And how much?
12 What have you done?

13 A. I looked at the invoice --

14 MR. KENNEY: Object to the form of the
15 question. You can answer it, if you
16 understood it.

17 A. Can you repeat the question?

18 Q. I believe I asked you a couple
19 questions ago whether you had tried to figure out
20 how much you had paid Mr. Palazzo for that
21 particular visit, and I believe you said "Yes."

22 What have you done to try to figure
23 that out?

24 A. I looked at his invoice.

25 Q. Okay. When did you look at that

1 invoice?

2 A. 2013.

3 Q. No, I mean as part -- as part of this
4 lawsuit you said you deleted it. You said -- let
5 me back up.

6 As part of this lawsuit I'd like to
7 know exactly how much you paid Mr. Palazzo.

8 Could you tell me that today?

9 A. Without looking at any documents, no.

10 Q. What documents could you look at to
11 help you solve that -- answer that question?

12 A. The invoices that I would have
13 received from Mr. Palazzo.

14 Q. And you believe, to the extent you had
15 any of those in your possession, you've given
16 them to your attorneys.

17 Is that correct?

18 A. Yes.

19 Q. Do you believe you've given any
20 invoices from Mr. Palazzo to your attorneys?

21 A. If I did, it would have been very
22 early on in the litigation when Mr. Sauder was
23 still with the Chimicles firm.

24 Q. At least based on what you've told me,
25 Mr. Palazzo visited your home around the same

1 time or a little bit before you would have come
2 into contact with Mr. Sauder.

3 Is that correct?

4 A. Yes.

5 Q. Do you recall when the original
6 complaint was filed in this case, approximately
7 the date?

8 A. I believe it was around 2013.

9 Q. As part of the filing of the
10 complaint, did you review the allegations that
11 were contained in that complaint?

12 A. I reviewed the entire complaint that
13 was drafted before it was filed.

14 Q. What about subsequent amended
15 complaints, have you reviewed those before they
16 would have been filed?

17 A. Yes, I have.

18 Q. And what about the discovery that has
19 been served in this case upon you, what did you
20 do -- did you review those discovery requests?

21 A. Yes, I did.

22 Q. Did you help draft the responses?

23 A. The legal responses I did not draft.
24 I reviewed them from counsel.

25 As far as getting documents together

1 and responding substantively, yes, I did assist
2 with that.

3 (Second Amended Class Action
4 Complaint/Jury Trial Demand is received and
5 marked as Exhibit Monica-2 for
6 Identification.)

7 Q. I'm going to hand you what's been
8 marked Monica-2.

9 (Witness reviewing exhibit.)

10 Q. Take a chance and look at it, but I
11 will represent to you that I believe this is just
12 a complete copy of the Second Amended Complaint
13 that's been filed in this lawsuit.

14 (Witness reviewing exhibit.)

15 A. Okay.

16 Q. Does Exhibit 2 look familiar to you,
17 sir?

18 A. Yes.

19 Q. Now, if you could flip to Page 6, I
20 believe that there's a section starting on that
21 page where you see your own name, "James Monica"?

22 A. I see that.

23 Q. And I believe this section goes on for
24 several pages and ends in Paragraph 42 on
25 Page 10. Do you see that as well?

1 A. I do.

2 Q. Now, contained in that section
3 underneath your name there are a couple of
4 pictures, three to be exact; there are two on
5 Page 8 and one on Page 9.

6 Let's start on Page 8.

7 Do you recognize the first picture on
8 Page 8?

9 A. Yes, I do.

10 Q. Who took that picture?

11 A. I did.

12 Q. When did you take that picture?

13 A. At some point before the first
14 complaint was filed.

15 Q. So, if I represent to you that I
16 believe that the first complaint was filed on
17 December 27, 2013, does that help you remember
18 when you might have taken that picture number
19 one?

20 A. I would have taken it at some point in
21 2013, I believe.

22 Q. Do you know where this picture is
23 taken?

24 A. I do.

25 Q. Where?

1 A. This is in my basement.

2 Q. Can you be more specific; what part of
3 your basement?

4 A. Well, my basement is just one room, so
5 it would be -- if you were standing in front of
6 the house looking towards the back, it would be
7 about two-thirds of the way towards the back of
8 the house in the ceiling.

9 The ceiling in the basement is not
10 finished. This is exposed.

11 Q. So, this particular tubing and fitting
12 that we see is in the ceiling between your
13 basement floor and the first floor of your home.

14 Is that correct?

15 A. That's correct.

16 Q. If I use the phrase "T-fittings," does
17 that make sense to you?

18 A. Yes, it does.

19 Q. And I believe this shows a T-fitting?

20 A. Yes.

21 Q. Was this particular fitting leaking?

22 A. Yes.

23 Q. Do you recall out of what part this
24 particular joint was leaking?

25 A. Yes, all of -- all of the leaks, to

1 the best of my recollection, the leak would be
2 right in the fitting piece, right in the center
3 of the fitting piece.

4 And either we would discover the leak
5 because of water, or the coupling, which is that
6 silvery gray looking thing around the tubing that
7 attaches the tubing to the fitting, the coupling
8 would burst and we would see the leak.

9 But they were leaking -- all of the
10 leaks were right at the fitting in my house, not
11 in the tubing.

12 Q. I just want to make sure I understand.

13 Was there -- do you believe there was
14 a hole in the fitting and like the water was
15 coming out of that hole or the leak was just at
16 the fitting itself?

17 A. I believe that the leak was at the
18 fitting itself.

19 If there was a hole, it was not large
20 enough to be visible with the naked eye.

21 Q. So, I'm just trying to make sure I
22 understand.

23 There was water coming out somewhere
24 near the fitting; you just don't know exactly
25 where it was coming out of?

1 A. I know exactly where it was coming out
2 of. It was the point right where the tubing and
3 the fitting married to each other, water was
4 coming out of there.

5 Q. So at the joint between the fitting
6 and the tubing there was water coming out?

7 A. Yes.

8 Q. And I forgot to cover this, but you
9 mentioned these "couplings."

10 I believe they're called "clamps."

11 If I use that phrase, will that make
12 sense to you?

13 A. Yes.

14 Q. What about the next picture on Page 8,
15 which is underneath Paragraph 36, did you take
16 that photograph?

17 A. I did.

18 Q. When did you take that photograph?

19 A. This was probably a picture of the
20 first fitting that burst, so it would have been
21 sometime in early 2013.

22 Q. And this is -- if I use the term
23 "elbow fitting," does that make sense to you?

24 A. Yes, it does.

25 Q. Now, you said "burst."

1 Can you explain what you mean by a
2 fitting burst?

3 The fitting itself looks, at least,
4 intact to me.

5 A. Where the water leaked -- when I say
6 "burst," the water leaks and -- the water starts
7 leaking.

8 Q. And if I could refer, maybe, back to
9 your previous answer, again, you're saying the
10 water was coming out of the joint between the
11 fitting and the tube, but you don't recall, for
12 instance, the tube splitting or a hole in the
13 tube or the fitting; you just know that the water
14 was coming out of that connection?

15 A. Correct.

16 Q. And you believe this might have been
17 related to the first leak?

18 A. Yes.

19 Q. If you could turn the page and look at
20 Paragraph 37, there's one final picture.

21 Who took this picture?

22 A. I did.

23 Q. When did you take this picture?

24 A. This is -- I took this picture at the
25 same time I took the second picture on the bottom

1 of Page 8 under Paragraph 36.

2 Q. Is this the same elbow that's depicted
3 underneath Paragraph 36?

4 A. Yes.

5 Q. And is this the inside of that
6 particular fitting?

7 A. Yes.

8 Q. Why did you take -- let me back up.
9 Why did you take these three pictures?

10 A. Because I suspected there was
11 something wrong with the fittings in my house.

12 Q. At the time that you took these
13 pictures, did you have legal representation in
14 this lawsuit?

15 A. I think I took these slightly prior to
16 that. I may have been in contact with Mr. Sauder
17 before I took these pictures, but I don't know if
18 I had actually signed a retainer agreement with
19 him or his firm when I took these.

20 Q. Was anyone else present when you took
21 these three pictures?

22 A. Maybe my wife.

23 Q. When you took -- I believe, from your
24 testimony and my understanding, is that the
25 pictures in Paragraph 36 and 37 were taken at the

1 same time, and the picture in Paragraph 35 was
2 taken at a different time.

3 Is that correct?

4 A. I might have taken them the same day
5 or within the same week, but I'm not 100 percent
6 sure.

7 Q. Did you take other pictures of these
8 particular fittings?

9 A. Of these particular ones that are
10 here?

11 Q. Yes.

12 A. Not that I'm aware of.

13 Q. Have you taken other pictures of the
14 fittings in your home, or the plumbing in
15 general?

16 A. I haven't taken any pictures of the
17 plumbing in general. I did take pictures of some
18 of the fittings with the other leaks that I had.

19 Q. Okay. And to the extent you've taken
20 photographs of the other fittings in your home,
21 have you turned those over to your counsel?

22 A. Yes, I have.

23 Q. When was your house on Hillcrest
24 Boulevard built?

25 A. We started construction in July of

1 2010 and we received our final certificate of
2 occupancy in April of 2011.

3 Q. And when did you move into the home?

4 A. April of 2011.

5 Q. Can you generally describe the home to
6 me, please?

7 A. In what way?

8 Q. How many bedrooms does it have?

9 A. Four.

10 Q. How many bathrooms?

11 A. Three-and-a-half.

12 Q. How many stories is it?

13 A. Two with a quasi-finished basement.

14 Q. What do you mean by "quasi-finished"?

15 A. Well, it has carpeting, the walls are
16 painted, but the ceiling is exposed. There's no
17 panel like this (indicating) or any kind of
18 ceiling.

19 Q. The part of your basement, it sounds
20 like -- is it all carpeted?

21 A. Not entirely all of it. We have --
22 where our hot water heater is we have a little
23 storage area there, and that's kind of -- we have
24 a temporary curtain wall up there, and the
25 carpeting ends right where that is.

1 Q. And do you use your carpeted part of
2 your basement for anything in particular?

3 A. Just recreation. My kids use it for
4 playing. There's a couch, a TV, a bar down
5 there, exercise area.

6 Q. Is there a bathroom in the basement?

7 A. No. There was supposed to be, but
8 there isn't.

9 Q. Did you design this house yourself?

10 And by "you" I mean did you hire
11 someone for your house to design it for you?

12 A. We retained an architect.

13 Q. And did you have a general contractor
14 build it for you?

15 A. No.

16 Q. Who built it?

17 A. I served as the general contractor,
18 but I'm not a contractor by trade, but I hired
19 all of the tradesmen directly.

20 Q. When it came time to hire a plumber to
21 install the plumbing, how did you go about
22 finding someone?

23 A. He came highly recommended from
24 another contractor who was doing the excavation
25 work at the house.

1 Q. Who was the excavation contractor?

2 A. V.A. Spatz & Sons. S-p-a-t-z.

3 Q. And by "he", I believe we both
4 understand that to be Richard Roman.

5 Is that correct?

6 A. The plumber, yes.

7 Q. Sorry, yes.

8 Now, after you received this
9 recommendation from the excavator, did you
10 contact Mr. Roman?

11 A. I did.

12 Q. And did you ask him to provide you
13 with a proposal?

14 A. I did.

15 Q. Did you receive proposals or bids from
16 any other plumbing contractors for the work --
17 the plumbing on your home?

18 A. I spoke to a couple of other plumbers,
19 but I do not believe I actually received any
20 formal proposals from any of the plumbers.

21 Q. When you spoke to Mr. Roman about
22 possibly providing or being your plumbing
23 subcontractor, do you recall what you discussed?

24 A. Yes. We discussed the type of
25 materials that he would use, whether we would use

1 his plumbing supply company or whether I would
2 furnish all of the fittings.

3 Obviously, we discussed the price, and
4 we discussed the type of heating system; whether
5 I wanted hot water base, forced air, that sort of
6 thing.

7 Q. Were you interested in having PEX used
8 for the plumbing in your home or was that
9 something that Mr. Roman recommended?

10 A. That was something Mr. Roman
11 recommended. I had never heard of it, nor did I
12 know anything about it.

13 Q. After it was recommended by Mr. Roman,
14 did you do any research into PEX in general?

15 A. No.

16 Q. Did you and Mr. Roman ever discuss
17 what brand of materials he was going to use for
18 the plumbing?

19 A. No.

20 Q. You mentioned that you had a
21 discussion about who would supply the materials,
22 he or you --

23 A. The fittings.

24 Q. The fittings, okay.

25 A. And what I mean by "fittings," if I

1 may clarify, I'm not talking about these NIBCO
2 fittings, I'm talking about faucets, shower
3 handles.

4 Q. Perhaps fixtures?

5 A. Fixtures, sorry.

6 Q. Okay. So your discussion -- to
7 clarify what you said earlier, you meant you had
8 a discussion about who would supply the fixtures
9 for the plumbing?

10 A. Yes, yes.

11 Q. Did you have a discussion with
12 Mr. Roman with about what type of fittings would
13 be used in your home?

14 A. No.

15 Q. So you don't recall having a
16 discussion about brass or plastic fittings?

17 A. We did not, not that -- I don't
18 recall. We did not have a discussion about that
19 whatsoever.

20 The only option that he gave me was
21 whether I wanted water base heat or forced air,
22 and he asked if I wanted to use traditional
23 copper plumbing, tubes and fittings, or this PEX
24 stuff, and he said the PEX is a lot easier, it's
25 better. He told me that it would be what he

1 would prefer to use and I said okay, but we never
2 had any conversations about the particular brands
3 or the fittings or anything of that sort.

4 Q. Did you discuss any possible price
5 difference between the copper and the PEX?

6 A. We probably did.

7 Q. Was price important to you in deciding
8 on what kind of plumbing you were going to have
9 in your house?

10 A. No.

11 Q. So if copper would have been more
12 expensive you would have been okay with that?

13 A. Yes. I mean, if it was quadruple in
14 price, obviously, I would consider the price as a
15 factor, but it was not my primary concern.

16 Q. Had you lived in a home before you
17 moved into your home on Hillcrest Boulevard?

18 A. Yes.

19 Q. Do you know what kind of plumbing that
20 home had?

21 A. The house was very, very old. I would
22 be guessing, but I would assume it was
23 traditional copper fitting.

24 Q. So copper tubing and fittings?

25 A. Right, but I'm not 100 percent sure of

1 that.

2 Q. Where was that home located?

3 A. 12 Hillcrest Boulevard.

4 Q. No, your previous home?

5 A. 12 Hillcrest Boulevard.

6 Q. Okay. Interesting. So you tore down
7 your previous home and built a new one?

8 A. Yes.

9 Q. Why did you decide to tear down your
10 previous home and build a new one?

11 A. Because the house was very, very old.
12 It was my great grandmother's. It was not big
13 enough to have children in.

14 Q. Where did you live while your house
15 was being rebuilt?

16 A. 10 Hillcrest Boulevard.

17 Q. So next door?

18 A. Yes.

19 Q. Did you rent that house?

20 A. No, that's my parents' house.

21 Q. So you lived next door to your
22 parents?

23 A. Yes.

24 Q. Has your parents' home been rebuilt or
25 is it still the original home?

1 A. Still the original home.

2 Q. On Exhibit 2, could you please turn to
3 Page 7?

4 (Witness reviewing exhibit.)

5 Q. And, in particular, I'm looking at
6 Paragraph 30.

7 Do you see there it says, "Plaintiff
8 Monica's residential plumbing system was
9 installed using NIBCO plumbing accessories,
10 including NIBCO PEX tubing, NIBCO PEX fittings,
11 NIBCO clamps and other installation accessories"?

12 Do you see that?

13 A. I do.

14 Q. When did you learn that the plumbing
15 in your home included NIBCO products?

16 A. In 2013 when we started having the
17 leaks.

18 Q. So up until that point you were not
19 aware of that fact?

20 A. No.

21 Q. Now, because the ceiling in your
22 basement is not finished, some of the tubes are
23 exposed?

24 A. All of them are exposed.

25 Q. Have you ever looked at the tubing

1 itself and been able to see any sort of notations
2 or writing on the tubes?

3 A. At some point I'm sure I have, yeah,
4 like a computer-generated label or something.

5 Q. Is that what they call a "stamp"?

6 A. Something like that.

7 Q. But up until you started having leaks
8 you've never took notice of that?

9 A. No.

10 Q. Let's drop down to Paragraph 33.

11 It says, "In November of 2012,
12 Plaintiff Monica discovered water saturation on
13 the walls and ceiling in the basement area of his
14 home."

15 Now, am I understanding correctly,
16 based on your prior testimony, that that
17 saturation was in the ceiling between the
18 basement and the first floor and then also some
19 wall saturation? Is that correct?

20 A. Yes.

21 Q. Do you recall what part of your
22 basement you found the saturation?

23 A. Yes, I do.

24 Q. Can you please describe that?

25 A. It's in the ceiling. Approximately, I

1 would say if you're standing at the very front of
2 the house looking towards the back, on the right
3 side about two-thirds of the way to the back.

4 Q. Do you recall -- okay.

5 If we go to the next paragraph there's
6 some discussion, I believe, of that same leak.
7 Is that correct?

8 A. Paragraph 34?

9 Q. Yes.

10 A. Just give me a second to read that.
11 (Witness reviewing exhibit.)

12 A. What was your question?

13 Q. Paragraph 34; that's related to the
14 same leak in November of 2012.

15 Is that correct?

16 A. Yes.

17 Q. What plumber came out to your home to
18 investigate this leak?

19 A. His first name was John. I don't know
20 his last name, and I don't know if he had his own
21 plumbing company. He had a red truck.

22 Q. How did you get the name of this
23 plumber?

24 A. I got his name from our electrician.

25 Q. Who is your electrician?

1 A. Evergreen Electric.

2 Q. And is there someone in particular at
3 Evergreen that you spoke to?

4 A. Yes. His name was Al Pavao.

5 Q. Can you spell that for me?

6 A. P-a-v-a-o.

7 Q. So you spoke to Al Pavao and asked him
8 for the name of a plumber?

9 A. Al was our electrician, but he also
10 was a family friend of ours. He did electrical
11 work for my parents over the years.

12 And this fitting -- you have to
13 understand -- is that the stuff just leaks and
14 you're sitting there and the water is leaking;
15 it's not just a little drip, it's leaking
16 profusely, so you need to get things fixed
17 quickly.

18 And I'm obviously not a plumber, I'm
19 not equipped to fix it. So he said, "This guy
20 John is local. I know him. Call him. He can
21 come over here and get it fixed for you in the
22 next 24 hours or so."

23 So I called the guy, he came over,
24 fixed it, paid him cash, and never saw him again.

25 Q. Do you know how much you paid him?

1 A. I don't know for sure. I would say it
2 was probably somewhere around \$150.

3 Q. Did he give you any sort of receipt or
4 invoice related to that work?

5 A. No.

6 Q. And when he fixed the leak in your
7 house, what did John do?

8 A. He took out the NIBCO fitting that was
9 leaking and he replaced it with another fitting
10 and clamped it down, re-clamped it, and that was
11 it.

12 Q. Do you know what type of fitting he
13 used?

14 A. I do not.

15 Q. Do you know what brand of fitting?

16 A. I do not.

17 Q. Do you know what material that fitting
18 was made of?

19 A. I do not.

20 Q. Did he replace any tubing as part of
21 that repair?

22 A. I believe he would have had to have
23 replaced at least a short amount of it just to
24 get it all to fit together.

25 Q. Do you know what brand of tubing he

1 used?

2 A. I do not.

3 Q. Did you have any discussion with him
4 about what brand or material he was using at that
5 time?

6 A. Yeah. As long as it wasn't NIBCO, I
7 was fine.

8 Q. So at that time, after this first
9 leak, you became aware that NIBCO was the brand
10 of fittings that were in your home?

11 A. Yes.

12 Q. Now, if I refer to Paragraph 34 it
13 says, "The failed PEX fitting assembly was
14 replaced with another NIBCO PEX fitting assembly
15 which also subsequently failed prematurely in
16 November 2013."

17 Do you see that?

18 A. Um-hum.

19 Q. "Yes"?

20 A. Yes, I do.

21 Q. But you said you didn't want him to
22 use NIBCO. Is that correct?

23 A. I did say that.

24 Q. But he used it anyway. Is that what
25 you're saying?

1 A. What he used, if it was made by NIBCO,
2 I don't know the material, but it's like a cream
3 color, so it's a different material than what the
4 original fitting was, I believe.

5 Q. Was that fitting -- do you believe
6 that fitting was manufactured by NIBCO?

7 A. I really don't know. I could answer
8 your questions very easily by walking in my
9 basement and looking at it, but I don't know off
10 the top of my head.

11 Q. But it says in this complaint that the
12 old NIBCO fitting was replaced with a NIBCO
13 fitting. Is that correct?

14 A. That's what it says here.

15 Q. And you reviewed this complaint before
16 it was filed. Is that correct?

17 A. I did.

18 Q. And you would have had an opportunity
19 to walk to your basement and look at that
20 fitting. Isn't that correct?

21 A. I would have, yes.

22 Q. And did you do that?

23 A. At the time I reviewed this complaint,
24 no.

25 Q. Did you check whether that was an

1 accurate statement in Paragraph 34, that the
2 failed PEX fitting was replaced with another
3 NIBCO PEX fitting?

4 A. If that's what it says here, then
5 that's what I did.

6 Q. Can you explain what you mean?

7 A. That means that if that's what this
8 complaint says, I certified that the facts in
9 this complaint are accurate, and we're talking
10 three-plus years ago. I've had six or seven
11 leaks in my house --

12 Q. I'm going to stop you there,
13 Mr. Monica.

14 MS. STEPHENS: Strike that as
15 nonresponsive. I asked you a very
16 straightforward question.

17 MR. KENNEY: Object to that.

18 A. And I answered you straightforward. I
19 said, if that's what it says then that's what is
20 accurate as I certified to the facts that are in
21 this complaint.

22 Q. Okay. But then you just told me that
23 you told John that you just wanted to make sure
24 that whatever he put in your house wasn't NIBCO.

25 Is that correct?

1 A. Yes. I said that to him in a joking
2 manner when there was water gushing out of my
3 ceiling --

4 Q. So --

5 A. -- all over the carpet.

6 Q. -- despite your joke, you believe he
7 still used a NIBCO product?

8 A. I have no idea what he used.

9 Q. But you believe, based on what you
10 wrote in this complaint, that it is a NIBCO
11 fitting?

12 A. At the time, yes; whatever is here is
13 what's probably the most accurate to rely upon.

14 Q. Is that fitting still in your home?

15 A. If it's the one that I'm thinking of
16 it is, but it says here that that was replaced by
17 another NIBCO fitting which was also -- failed
18 prematurely, which could have been my second
19 basement leak.

20 So there was one fitting that was
21 replaced. I'm not sure if it was replaced with
22 NIBCO. It was replaced with an almondy
23 cream-colored fitting.

24 And there is a second leak that was in
25 the basement that was replaced with another NIBCO

1 fitting that did also break subsequently to it
2 being installed.

3 Q. So you believe the same fitting was
4 the second leak in your home. Is that correct?

5 A. It was either number one or number
6 two.

7 Q. Okay. I want to make sure we're
8 talking about the same thing.

9 You believe the first leak in your
10 home was this November 2012 leak that we've just
11 been discussing?

12 A. In the basement.

13 Q. In the basement?

14 A. Yes.

15 Q. And that one you believe was repaired
16 by John. Is that correct?

17 A. That was repaired by John.

18 Q. What was the next leak?

19 A. The next leak was in my mud room,
20 which is on the first floor of the house.

21 And that was -- as opposed to this one
22 that we're talking about in Paragraph 34 where
23 it's an exposed wall -- that one was inside a
24 wall that was not exposed; sheet rocked and
25 painted.

1 Q. Can you describe generally where the
2 mud room is in your house?

3 A. If you're looking at the front of my
4 house looking towards the back, it's on the
5 right-hand side of the house.

6 We have a side-door entrance.

7 Q. Is there a sink in that mud room?

8 A. There's a wash sink in there, yes.

9 Q. Is it a full bathroom as well?

10 A. No. It's not that kind of sink. It's
11 a freestanding sink.

12 Q. And do you recall approximately when
13 this second leak was discovered?

14 A. It was within six months of the first
15 one.

16 Q. What did you do after you discovered
17 the second leak?

18 A. I called the plumber.

19 Q. What plumber did you call?

20 A. Palazzo.

21 Q. So, in this particular instance you
22 called Michael Palazzo, who we were talking about
23 earlier. Is that correct?

24 A. Yes.

25 Q. And how did you get Mr. Palazzo's

1 name?

2 A. I also got him -- his name from
3 Mr. Pavao.

4 Q. And was this repair we were discussing
5 at the beginning of the deposition that we
6 believe cost about \$1,500?

7 A. Palazzo fixed the second and third
8 leaks that I had, both of them, so it could have
9 been that one or it could have been the third
10 one.

11 Q. Do you recall what Mr. Palazzo did
12 regarding the second leak?

13 A. Yes.

14 Q. What did he do?

15 A. Well, he broke open the sheetrock.
16 The sheetrock was saturated to the point that
17 water was actually penetrating through the
18 sheetrock like a waterfall out onto the floor.

19 He cut open a piece of the sheetrock,
20 he found the fitting where the water was leaking,
21 he cut it out, he replaced it with a new fitting
22 and clamped down the tubing.

23 And then I hired a carpenter to come
24 in and re-sheetrock, spackle, and paint.

25 Q. Do you recall how much you paid

1 Mr. Palazzo for -- to fix this leak number two?

2 A. Yes, I believe that was approximately
3 \$1,500.

4 Q. Now, did Mr. Palazzo replace just the
5 fitting or did he replace any of the tubing?

6 A. Well, I believe just by nature he
7 would have had to replace some of the tubing, at
8 least a little bit of it, but I don't know for
9 sure how much.

10 I would say, if he replaced any of it,
11 it was probably less than a couple of inches, but
12 I don't think that he replaced very much, if any.

13 Q. I apologize. I'm going to go back to
14 the first leak.

15 What happened to the fitting that was
16 replaced after the first leak, so the one that
17 was in your basement that you had John repair?

18 A. That was saved, boxed up, and sent to
19 our experts for testing.

20 Q. And so the fitting that was related to
21 the first leak in your home that was replaced by
22 John, you believe it was saved and sent to your
23 experts. Is that correct?

24 A. Yes.

25 Q. What happened to the fitting that

1 Michael Palazzo repaired?

2 A. I believe that was also sent to our
3 experts.

4 Q. And who is the carpenter that you
5 hired who fixed the wall?

6 A. His first name is Charlie. I don't
7 remember his last name.

8 Q. Do you recall how much you paid
9 Charlie?

10 A. Approximately, \$1,200.

11 Q. How did you pay Charlie?

12 A. Cash.

13 Q. And you believe you paid Michael
14 either with cash or a check?

15 A. I think the first time I probably paid
16 Michael a check. It was either cash or check.

17 Q. And at the time, if you paid him by
18 check, it would have been out of your Wells Fargo
19 account. Is that correct?

20 A. Correct.

21 Q. So the first failure that you allege
22 occurred in November of 2012 and the second one
23 occurred within six months.

24 Do you recall, was it like in the
25 spring of 2013?

1 A. That sounds about right.

2 Q. So, after the first leak in your home
3 in November of 2012, that's when you first
4 discovered the NIBCO products were what was used
5 in the plumbing. Is that correct?

6 A. Yes.

7 Q. Did you contact NIBCO after that first
8 leak?

9 A. I contacted NIBCO -- it was either
10 after the first one or most likely it was
11 probably after the second one that Palazzo
12 repaired.

13 Q. How did you know how to contact NIBCO?

14 A. I Googled their name on the internet.

15 Q. When you Googled NIBCO did you also
16 look at their warranty?

17 A. No.

18 Q. So when you contacted NIBCO did you
19 e-mail them or call them?

20 A. I called.

21 Q. What do you recall about that phone
22 call?

23 A. I spoke to a gentleman. I told him
24 what was going on in my house. I asked him if
25 there were other folks that were having that kind

1 of problem. I asked him if he knew of any issues
2 that they were having. The guy got very curt
3 very quickly.

4 In my opinion, I think that I was
5 definitely not the first person that had called
6 to complain. He sounded like he was very well
7 aware of the situation.

8 And I said to him, I said, "Look, you
9 know, I really want to try to get this resolved.
10 I have a very new home and this is looking to be
11 somewhat of a serious problem," and the guy
12 literally said, "Well, if you have to sue us, do
13 what you have to do," and hung up the phone on
14 me.

15 Q. Do you remember this man's name?

16 A. No.

17 Q. Did you have any contact with NIBCO
18 after that phone call?

19 A. No.

20 Q. Did you receive any e-mails from
21 NIBCO?

22 A. No.

23 Q. What's your e-mail address?

24 A. Jamesmonica@optononline.net

25 Q. So this was your only -- you believe

1 this phone call was your only contact with NIBCO.

2 Is that correct?

3 A. Yes.

4 (NIBCO Return Authorization Form,
5 7/31/13, is received and marked as Exhibit
6 Monica-4 for Identification.)

7 Q. I'm handing you what I've marked
8 Monica Exhibit 4.

9 MR. KENNEY: We skipped Exhibit 3
10 then.

11 MS. STEPHENS: Yes, I'm going to come
12 back to it.

13 And just for the record, these were
14 documents that I believe were produced by
15 your counsel to me.

16 At the time they were produced they
17 did not have Bates labels, so I have gone
18 ahead and Bates labeled them Cole-Monica
19 000001 through 3 just for purposes of
20 tracking.

21 (Witness reviewing exhibit.)

22 Q. Does Monica Exhibit 4 look familiar to
23 you?

24 A. No.

25 Q. Do you see on that first page it

1 appears to say "James Monica", and then it's a
2 little cut off, but it says "12 Hillcrest
3 Boulevard"?

4 Do you see that?

5 A. I do see that.

6 Q. And that's your name and address?

7 A. That is.

8 Q. Do you see that over on the right side
9 of the top it says, "Installer: Roman Plumbing &
10 Heating"? Do you see that?

11 A. I do.

12 Q. Do you recall telling NIBCO during
13 that phone call who installed the plumbing in
14 your home?

15 A. I do not.

16 Q. Do you see the date above that? It
17 says "Initiation Date: July 31, 2013"?

18 A. Yes.

19 Q. Does Exhibit 4 refresh your
20 recollection at all about approximately when you
21 spoke to NIBCO?

22 A. Well, it would if I recognized this
23 document, but I don't recognize the document.

24 Q. And in the middle of this page, at
25 least, it mentions a brass insert elbow.

1 Do you see that notation?

2 A. Yes.

3 Q. And one of the leaks that we've been
4 discussing so far involved a brass elbow, do you
5 believe?

6 A. Yes.

7 Q. So you don't recognize any page of
8 Cole -- of Monica Exhibit 4.

9 Is that correct?

10 A. To the best of my recollection, I've
11 never seen this document.

12 Q. On the last page do you see your
13 e-mail address listed there where it says "Fax"?

14 A. I do.

15 Q. And that's the e-mail address you just
16 gave me. Is that correct?

17 A. That's correct.

18 THE WITNESS: Would you mind if I just
19 got some water real quick?

20 MS. STEPHENS: Let's take a break,
21 actually. We've been going about an hour.

22 (Recess.)

23

24 BY MS. STEPHENS:

25 Q. We're back on the record.

1 Mr. Monica, you understand that you're
2 still under oath?

3 A. I do.

4 (E-Mail w/attachment, 7/31/13, Baumann
5 to Monica, is received and marked as Exhibit
6 Monica-9 for Identification.)

7 Q. Let me hand you what I've marked as
8 Exhibit 9.

9 MS. STEPHENS: For the record,
10 Exhibit 9 has some Bates labels, NIBCO-Cole
11 00110144 and 145. It's a two-page exhibit.

12 Q. Do you recognize any part of
13 Exhibit 9?

14 A. I do not.

15 Q. Do you see the first page?

16 It says, "From: Gregg Baumann."

17 Does that name look familiar to you at
18 all?

19 A. No, it does not.

20 Q. Does it sound familiar to you at all?

21 A. It does not.

22 Q. And this is dated July 31, 2013.

23 Do you see that?

24 A. I do see that.

25 Q. Is that your e-mail address in the

1 "To" line?

2 A. Yes.

3 Q. And on the first page it indicates
4 that there's an attachment.

5 And if you turn to the next page, does
6 that look similar to the first page of Exhibit 4?

7 A. Yes.

8 Q. And it's a document entitled "Product
9 Return Authorization" and it has your name and
10 address on it. Is that correct?

11 A. That's correct.

12 Q. And it has that same information,
13 "Roman Plumbing & Heating." It has -- it
14 indicates a brass insert elbow.

15 Do you remember that?

16 I'm sorry, do you remember that on
17 Exhibit 4?

18 A. I remember what you showed me on
19 Exhibit 4, yes.

20 Q. But you don't recall receiving this
21 e-mail or this particular document.

22 Is that correct?

23 A. I do not.

24 Q. You can put that aside, please. I
25 believe we're up through the second week, and you

1 believe this phone call with NIBCO occurred
2 either after the second or third leak.

3 Is that correct?

4 A. The second and third leak occurred
5 very close in time together. So it could have
6 been between the second and third, after the
7 third, but right around that time period, yes.

8 Q. Where was the third leak in your home?

9 A. The first floor family room ceiling.

10 Q. Let me make sure I understand what
11 you're saying. It was the ceiling between the
12 first and second floors of your home in your
13 family room. Is that correct?

14 A. Yes. The second leak that we're
15 talking about in the mud room, that was in the
16 side wall, not the ceiling.

17 Q. Correct. And the carpenter came in
18 and cut out the sheetrock in the wall, exposed
19 the fitting and -- I guess the plumber exposed
20 it, fixed it, and then the carpenter came in and
21 fixed the wall. Is that correct?

22 A. That's correct.

23 Q. And then you believe the second -- the
24 third leak was close in time to the second leak.

25 Is that correct?

1 A. The third leak was close in time to
2 the second leak, yes.

3 Q. How close together do you think; like
4 days?

5 A. No, it was longer than that. I would
6 say a month-and-a-half, two months maybe.

7 Q. By the time the third leak occurred,
8 had the second leak already been repaired
9 including all the carpentry work?

10 A. Yes.

11 Q. So when the third leak was discovered,
12 what did you do?

13 A. I called Mr. Palazzo and we went
14 through the same routine.

15 Q. So he opened up the ceiling to
16 discover where the water was coming from and then
17 repaired the fitting. Is that correct?

18 A. Um-hum.

19 Q. Is that a "Yes"?

20 A. Yes, sorry.

21 Q. What type of -- I forgot to ask this
22 about the second leak. I'm going to ask the
23 second leak first.

24 What type of fitting was it; was it a
25 "T" or was it an elbow, do you recall?

1 A. I'm not sure.

2 Q. How about the third leak, do you
3 recall what type of fitting?

4 A. I'm pretty sure that was an elbow --
5 I'm sorry, a "T", sorry. I'm pretty sure that
6 was a "T".

7 Q. And just to make sure we understand,
8 an elbow typically has just two connections and a
9 T-fitting has three connections.

10 Is that your understanding?

11 A. Yes.

12 Q. When Mr. Palazzo fixed the third leak,
13 what did he do?

14 A. Same thing as he did with the second
15 leak; although this time it was a little bit more
16 involved because it was in the ceiling and we
17 have crown molding in the ceiling which was
18 damaged, so it took a little bit more carpentry
19 work to sort that out then the previous one.

20 But as far as what Palazzo did, it was
21 the same thing. He cut a hole where the water
22 was dripping out, found the leaking fitting where
23 the water was coming from, took the fitting out,
24 replaced it, and then we had the carpenter come
25 in and do the carpentry work and the painting and

1 the crown molding.

2 Q. What happened to the fitting that was
3 removed as part of that repair process?

4 A. As I said before, I submitted some of
5 the fittings that I had to either our counsel or
6 to our experts directly.

7 I believe that one was probably also
8 one of the ones that was submitted, but I don't
9 know for certain exactly whether or not it was.

10 Q. And by the time -- so this third leak
11 was occurring within a couple months, or maybe a
12 little bit less, than the second leak, so we're
13 talking maybe mid 2013. Is that correct?

14 A. That sounds about right.

15 Q. And by that time you had not retained
16 counsel yet. Is that correct?

17 A. You'd have to look at the retainer
18 agreement. I don't know the date for sure.

19 Q. Well, the fittings that were removed,
20 did you have them for a while in your possession,
21 you were just kind of holding onto them, and
22 later you gave them to counsel, do you remember?

23 A. I believe that there were a couple of
24 the most recent ones after I had retained counsel
25 that they were sent directly -- immediately.

1 I think one of the ones, that elbow
2 one (indicating) -- I know you can't verbalize
3 it --

4 Q. In Paragraph 36?

5 A. That one I did have in my possession
6 for a while before it was sent in. I kept it in
7 a Ziplock bag.

8 Q. How much do you think you paid
9 Mr. Palazzo for repairing the third leak?

10 A. I believe it was about the same,
11 \$1,500, for the plumbing.

12 Q. Do you recall if you paid him cash or
13 check?

14 A. I don't recall. It was either cash or
15 a check.

16 Q. And what about -- what carpenter did
17 you hire to fix the house?

18 A. I use the guy Charlie, but he wasn't
19 available, so he sent somebody that works with
20 him, and I don't know the guy's name.

21 Q. Do you recall about how much you spent
22 for that carpentry work for the third leak?

23 A. That was a little bit more because it
24 was crown molding involved. I think that was
25 over \$2,000.

1 Q. Like \$2,100 or \$2,900?

2 A. Closer to 21.

3 Q. Do you have any receipts or invoices
4 for either the plumbing repair or the carpentry
5 work?

6 A. I would have received an e-mail
7 invoice from Palazzo. That would be in my
8 Optonline account.

9 As far as the carpentry and the
10 painting, no receipt, no invoice, just a
11 handshake.

12 Q. Did you have any leaks after this
13 third leak?

14 A. Yes, I did.

15 Q. And when did the next leak occur?

16 A. I just want to back up for one second
17 on the question you asked me about the receipt.

18 Q. Yes.

19 A. I do recall, once we were involved in
20 the litigation with the carpenter, Charlie, I
21 asked him to give me an invoice. It was sometime
22 after he had done the work. I don't recall
23 whether or not he actually did.

24 If he did, I would have submitted it
25 to counsel. He may have given me one invoice at

1 some point in time. I'm not 100 percent sure.

2 Q. Just to make sure I understand, after
3 you became involved in the litigation against
4 NIBCO, you went back and said to Charlie, "Hey,
5 can I get an invoice for the work that you did,"
6 and you're just not sure if he gave you one?

7 A. Right, and I didn't follow up.

8 Q. So let's fast forward into leak number
9 four. When did leak number four occur?

10 A. That would have been maybe two, three
11 months after leak number three.

12 Q. So fall of 2013?

13 A. Sounds about right to me.

14 Q. What location in your home did the
15 leak occur?

16 A. That also occurred in the ceiling in
17 the family room, but a different location within,
18 I don't know, 12 to 15 feet of the third leak.

19 Q. So was it a different fitting?

20 A. Yes, completely different.

21 Q. Was it a T-fitting again?

22 A. Yes.

23 Q. And what did you do after discovering
24 leak number four?

25 A. I was out of town on business when it

1 happened, and my neighbor's dad is a retired
2 plumber and he came over and fixed -- did the
3 plumbing work.

4 Q. And so what's the name of your
5 neighbor?

6 A. I really would not be interested in
7 giving you this information for you to call these
8 folks. I mean --

9 Q. What is the name of your neighbor?

10 A. Why is that necessary?

11 Q. What is the name of your neighbor?

12 A. Why is that necessary?

13 MS. STEPHENS: Mr. Kenney?

14 MR. KENNEY: Yes.

15 MS. STEPHENS: Are you going to allow
16 your client not to answer these questions?

17 MR. KENNEY: I didn't instruct him not
18 to.

19 BY MS. STEPHENS:

20 Q. Mr. Monica, you sued my client --

21 A. Um-hum.

22 Q. -- in a court of law.

23 A. Yup.

24 Q. Do you understand what that entails?

25 A. Yes.

1 Q. Okay. So you're asking us for damages
2 and money and other things, and this is -- this
3 deposition today is part of our process of
4 understanding your claims and what you're asking
5 of us.

6 A. Understood.

7 Q. We have a right to know what happened
8 in each of these instances, including who did the
9 repair work and what they did.

10 A. Well, you think you have the right to
11 know.

12 Q. Well, I believe a court would agree
13 with me.

14 A. Okay.

15 Q. If you're not going to answer my
16 question, I can follow up with the court and we
17 can come back and do this again another time.

18 A. I didn't say that I'm not going to
19 answer your question.

20 Q. Well, then please answer my question.

21 A. I asked you a question.

22 Why is that relevant, what my
23 neighbor's name is?

24 Q. This is not my deposition. I don't
25 have to answer that question. You're a witness

1 today, you're not an attorney.

2 I'm asking the questions, not you.

3 A. I understand that.

4 Q. Please answer my question, what's the
5 name of your neighbor, and then the next question
6 I believe you already know will be, what's the
7 name of your neighbor's dad?

8 A. I'm not comfortable answering that.

9 MR. KENNEY: Let's take a short break.

10 MS. STEPHENS: I have a question
11 pending. I'd like an answer.

12 A. I gave you my answer. I'm not going
13 to answer it unless he instructs me to answer it.

14 MS. STEPHENS: Let's take a short
15 break. I want an answer when he comes back.

16 MR. KENNEY: Understood. We will step
17 out for a minute.

18 (Recess.)

19

20 BY MS. STEPHENS:

21 Q. We're back on the record.

22 Mr. Monica, you understand you're
23 still under oath?

24 A. I do.

25 Q. And we just took a quick break at the

1 request of your counsel.

2 Are you now ready to answer my
3 question about the name of your neighbor?

4 A. My neighbor, yes. His name is Jason
5 Caprarola.

6 Q. Can you spell that for me, please?

7 A. C-a-p-r-a-r-o-l-a.

8 Q. And what's the name of Jason's dad who
9 did this repair work for you?

10 A. Joseph Caprarola.

11 Q. And was Mr. -- was Joseph -- was he a
12 retired plumber?

13 A. I believe so.

14 Q. And what did Joseph do when he helped
15 repair leak number four?

16 MR. KENNEY: Object to the form.

17 A. He did the same thing that any of the
18 other guys did. He cut a piece of the sheetrock
19 out, found the broken fitting that was leaking,
20 this one was a T-fitting, I believe, also, he
21 repaired it.

22 And while he had the wall open he
23 found another one that was about ready to burst,
24 so he repaired that one too while he had the wall
25 open.

1 Q. Was that second fitting also in the
2 ceiling?

3 A. Yes, they were within, I would say,
4 three to five feet of each other.

5 Q. And so were you present when he found
6 this second fitting that was, as you said, "ready
7 to burst"?

8 A. Yes, I was.

9 Q. And can you describe what you saw?

10 A. The fitting looks very similar to the
11 T-fitting that's pictured in the complaint.

12 Q. Under Paragraph 35, is that what
13 you're referring to?

14 MR. KENNEY: What page are you looking
15 for?

16 A. Yes, Paragraph 35. It looked very
17 similar to that. It had whatever that junk is on
18 the outside of it all over the place.

19 Q. Was there water present on the fitting
20 or on the pipe?

21 A. On the second one that he discovered?

22 Q. Yes.

23 MR. KENNEY: Object to the form.

24 You can answer.

25 A. I believe there was not water on that.

1 Q. How did -- when you say it was "ready
2 to burst," how did you -- how could you tell it
3 was ready to burst?

4 A. Because it looked -- it had a heavy
5 amount of whatever this material is on the
6 outside, and when that builds up you can see
7 pressure on the clamp begin to develop.

8 Q. So you believe both fittings that were
9 repaired by Joseph were these T-fittings similar
10 to what's pictured in your Paragraph 35?

11 A. Yes.

12 Q. Do you know what happened to these
13 fittings that Joseph removed from your home?

14 A. I don't know for sure. I may have
15 sent them in for testing.

16 Q. And when you mean "sent in for
17 testing," you meant sent to your counsel or --

18 A. To our experts or our counsel.

19 Q. And did you also have any carpentry
20 work done associated with leak number four?

21 A. Yes. The sheetrock had to be
22 replaced, taped, spackled, crown molding as well,
23 and painted.

24 Q. And who did that work?

25 A. The same guy who did the last one that

1 we were talking about.

2 Q. So not Charlie, but Charlie's friend?

3 A. Right, or co-worker. I don't know
4 their relationship.

5 Q. And how much did you pay the carpenter
6 for this leak number four repair?

7 A. I don't remember at all.

8 Q. Could you guess? Was it a \$1,000 more
9 or less? Was it more than \$1,000 or less than
10 \$1,000?

11 A. I'm not sure. I would guess it was
12 probably less than 1,000. I would be guessing.

13 Q. Did you pay in cash or check?

14 A. I paid in cash.

15 Q. Did you receive a receipt or an
16 invoice from Charlie's colleague?

17 A. Nope.

18 Q. Did you pay Joseph for the plumbing
19 repairs that he did?

20 A. No money exchanged hands.

21 Q. What do you mean by that?

22 Was there some other compensation that
23 was given?

24 A. Yes.

25 Q. And what was that?

1 A. I did some landscaping work at his
2 house.

3 Q. At Joseph's house or Jason's house?

4 A. I'm sorry, Jason's house.

5 Q. So, in exchange for Joseph doing this
6 plumbing repair for you associated with leak
7 number four, you did some landscaping work at
8 Jason's house. Is that correct?

9 A. I don't know if I would characterize
10 it as, per se, an "exchange," but you help your
11 neighbor out when you can.

12 I was away when this first happened,
13 and he came and helped me out and I really
14 appreciated it, and his dad didn't want to take
15 any money from me, so I provided some landscaping
16 services for him.

17 Q. Do you know what kind of materials
18 Joseph installed in your home when he repaired
19 the fittings?

20 A. I do not.

21 Q. Were they brass or were they plastic?

22 A. I just said I do not know.

23 Q. You don't know the brand, do you?

24 A. I do not.

25 Q. So after leak number four, which we

1 believe occurred in about the fall of 2013, did
2 you have any other leaks?

3 A. So those -- I think the way that I may
4 have classified in the complaint -- and I have to
5 go back and read it -- but four and five would
6 have been those two that were within three feet
7 of each other in the ceiling. I believe after
8 that -- I believe that was it.

9 There was one other fitting that was
10 openly exposed in the basement that we did
11 replace, but no water was leaking out of it.

12 Q. Well, let's back up. So, the second
13 leak that Joseph fixed when he was doing the
14 original work, he noticed this other fitting
15 that, as you described, was ready to burst.

16 Is that correct?

17 A. Correct.

18 Q. Was any water actually leaking out of
19 that fitting?

20 MR. KENNEY: Objection to the form of
21 the question.

22 A. No.

23 Q. Now, you just mentioned another
24 fitting that had been replaced at another time.

25 Is that correct?

1 A. After that, yes.

2 Q. Okay. And where was that fitting?

3 A. That was in the exposed ceiling in my
4 basement, right above the couch.

5 Q. And when was that fitting replaced?

6 A. Probably shortly after the one we were
7 just talking about.

8 Q. So, approximately, the fall of -- you
9 believe the fall of 2013. Is that correct?

10 A. I would be guesstimating, but that
11 sounds about right.

12 Q. And why was that fitting replaced?

13 A. Well, when you look at the fittings
14 that were exposed in my basement, you can see
15 some of them do not have a lot of that --
16 whatever that whitish material is on the outside
17 -- and some of them have a lot of that material
18 on it.

19 The ones that have a lot of that
20 material -- again, I'm not an expert nor am I a
21 plumber -- but the ones that have a lot of that
22 material are the ones that are close to the point
23 where they are going to burst and leak.

24 The ones that we repaired and did
25 leak, they were the ones that had the most of

1 that material exposed on the outside.

2 So I tried to be a little bit
3 preventative. When we go away on vacation I now
4 have to turn off my water so I don't have to
5 worry about a leak coming in and ruining the
6 carpet, so when there was one in the basement
7 that I saw that looked pretty bad, so I replaced
8 it.

9 Q. Who replaced that fitting?

10 A. My neighbor and I did it together.

11 Q. So, Joseph's dad, again, replaced it?

12 A. It was just Jason and I.

13 Q. Okay. Is Jason a plumber?

14 A. He's not a licensed plumber, no.

15 Q. What do you mean? Is he a plumber in
16 another sense?

17 A. No. He's a general contractor.

18 Q. Do you know what type of fitting Jason
19 put in to replace the fitting?

20 A. I don't. I think I took a picture of
21 it and I can get that information to you easily.

22 Q. So that fitting is still in your home?

23 A. Yes.

24 Q. Now, other than that leak that is
25 mentioned in the complaint where the fitting may

1 have been replaced twice, are all the new
2 fittings still in your home?

3 A. Yes.

4 Q. Did you pay Jason anything to do that
5 replacement in your basement?

6 A. No money exchanged hands.

7 Q. Okay. Did you maybe do some
8 additional landscaping work for him?

9 A. Yes.

10 Q. And, again, that particular fitting
11 replacement had not actually started leaking, so
12 there was no damage to the house.

13 Is that correct?

14 A. Correct.

15 Q. Now, in all of these instances of
16 leaks in your home, did you ever call Mr. Roman
17 who installed the plumbing?

18 A. In regards to those leaks?

19 Q. Correct.

20 A. I called Mr. Roman for a variety of
21 other issues, which I'm sure we're going to get
22 into. At some point we probably did have a
23 discussion about the NIBCO fittings.

24 I don't remember specifically -- first
25 of all, I would never ask him to come back to

1 replace them. So if I did have a discussion with
2 him and it was about the NIBCO fittings, it
3 probably would have been in passing.

4 Q. To make sure I understand, you had,
5 you know, a handful of leaks over a certain
6 period of time and you never had -- never called
7 up Mr. Roman and said, "Hey, can you come fix
8 this"?

9 A. No.

10 Q. Now, at some point in time you filed a
11 lawsuit against Mr. Roman. Is that correct?

12 A. I did.

13 Q. And what was the basis of that
14 lawsuit?

15 A. Breach of contract.

16 Q. Were there other claims involved?

17 A. Probably.

18 Q. Well, let's go ahead and take a look.

19 (Complaint, Monica vs Roman
20 Plumbing/Richard Roman, is received and
21 marked as Exhibit Monica-5 for
22 Identification.)

23 MS. STEPHENS: Again, this was
24 produced to us just yesterday and it didn't
25 have any Bates range numbers, so I have taken

1 the initiative and marked it Cole-Monica

2 000004 and it runs through nine.

3 Q. Take a look at Exhibit 5 and let me
4 know if you recognize it.

5 (Witness reviewing exhibit.)

6 A. I do.

7 Q. And is this the complaint you
8 mentioned that you reviewed in preparation for
9 your deposition today?

10 A. Yes.

11 Q. And this is the complaint in the
12 lawsuit that you filed against Roman Plumbing &
13 Heating and Richard Roman?

14 A. That's correct.

15 Q. And you represented yourself in this
16 lawsuit. Is that correct?

17 A. I did.

18 Q. Now, you're an attorney, Mr. Monica.
19 What three claims did you bring
20 against Mr. Roman in this lawsuit?

21 A. Breach of contract, breach of covenant
22 of good faith and fair dealing, and unjust
23 enrichment.

24 Q. So at least as far as the claims are
25 involved, it wasn't just a breach of contract

1 claim. Is that correct?

2 A. That's what I said, yes.

3 Q. Let's look at Page 2, Paragraph 9 of
4 this complaint.

5 And it says, "However, Defendants have
6 not fully performed the scope of work as outlined
7 and discussed in the parties' agreement."

8 Did you guys have a written agreement
9 between you and Mr. Roman?

10 A. A written agreement?

11 Q. Yes.

12 A. No, we did not.

13 Q. So you're referring to an oral
14 agreement in Paragraph 9?

15 A. I'm referring to an oral agreement and
16 a proposal document that he gave me.

17 Q. What work did defendants not fully
18 perform?

19 MR. KENNEY: In this case referring
20 to --

21 MS. STEPHENS: As referred to in
22 Paragraph 9.

23 A. He was supposed to rough-out a
24 bathroom in the basement, which he did not do,
25 and I paid him \$3,800 for that as a line item.

1 He was supposed to install a radon
2 pipe, which he forgot to do -- he didn't do.

3 In my bathroom he installed body
4 washes off center of the shower spray so that
5 when you stand in the shower the body sprays
6 completely miss your body.

7 There were some other things with some
8 of the fixtures.

9 Q. Such as?

10 A. We have a butler's pantry and there's
11 a sink that's 12 inches by 12 inches, and he
12 installed a faucet that is so big it was too big
13 for the sink that when you turn it on the water
14 actually misses the sink and hits the counter,
15 and we agreed that he would come and replace
16 that, which he did.

17 He agreed to move the body sprays in
18 the shower, which he didn't do.

19 In my family room there's a fireplace,
20 and next to the fireplace is a gas valve that is
21 exposed that he was supposed to cover. He didn't
22 do that.

23 And in our upstairs Jack and Jill
24 bathroom, that is shared between the two kids'
25 bedrooms, he was supposed to fix -- the drain was

1 either not properly installed or it broke right
2 away and he was supposed to fix that, which he
3 didn't do either.

4 Q. All of these things that you say
5 Mr. Roman didn't do or didn't fix, did anybody
6 fix them?

7 A. Some of the things we've had fixed
8 over the years. Some of them, like the body
9 sprays in the shower, we haven't.

10 Q. Now, in Paragraph 10 you allege that,
11 "Defendant failed to adhere to the standard of
12 care expected and failed to perform adequate
13 quality work at Plaintiffs' residence which
14 caused Plaintiffs significant damages and costs
15 to repair."

16 A. Um-hum.

17 Q. In what ways did Defendant fail to
18 adhere to the standard of care expected as
19 alleged by you in this lawsuit against Mr. Roman
20 and his company?

21 A. Well, I'll answer your question to the
22 best that I can, but I think you're asking me for
23 a legal conclusion.

24 Q. I'll ask you to leave the objections
25 to your attorney and just answer my question.

1 MR. KENNEY: He's just clarifying.

2 A. I'm just clarifying. I can tell you
3 my biggest problem with Rick. Rick was a good
4 plumber and he came very highly recommended, but
5 he bit off more than he could chew.

6 When he came into the job at our house
7 he was working on a very, very large job.

8 So, Rick would come to the house in
9 the morning with the materials for the day, he
10 would drop off his two guys, and he would go back
11 to the big job that he working on, and Rick,
12 himself, was not at the job, and that's why there
13 was so many problems.

14 For example, the body sprays in the
15 shower, his two guys installed them. Rick wasn't
16 there. If Rick was there I'm sure they would
17 have been installed properly, but that was my
18 biggest problem with him, was that he didn't show
19 up at the job.

20 Q. You believe he wasn't properly
21 supervising his employees who were actually doing
22 the work on the ground?

23 A. As far as I know, in New Jersey you
24 have to have a master plumber on site. The two
25 guys that he had at my house were neither of

1 which were classified as master plumbers.

2 Q. You believe the plumbing in your house
3 was installed by people who were not properly
4 licensed to install it. Is that correct?

5 A. That's not what I'm saying. What I'm
6 saying is I believe that you have to have a
7 master plumber on site.

8 I don't know if there are different
9 classifications of plumbers. I don't know.

10 But my understanding of the law is
11 there's supposed to be a master plumber present
12 when the work is performed, and Rick was not
13 present.

14 Q. What was the big job that Mr. Roman
15 was working on?

16 A. I have no idea.

17 Q. He just told you about it, that he had
18 another project he was working on?

19 A. It wasn't one house. It was a big
20 development. And I also knew that he was doing
21 that project because I knew the general
22 contractor who he was working for.

23 Q. Do you know whether Mr. Roman was
24 present during any testing of your plumbing
25 system?

1 A. What do you mean by "testing"?

2 Q. Like when they started -- when it was
3 all done and they did like a test run where you
4 turn the water on, was he present during that?

5 A. I don't know for sure.

6 Q. Do you know the names of the employees
7 or people who did install the plumbing at your
8 home?

9 A. I don't.

10 Q. You don't believe that they were
11 licensed master plumbers?

12 A. I have no idea. I know that they were
13 not master plumbers. I know that. I don't know
14 what kind of licensing, if any, they had.

15 Q. As part of that lawsuit with
16 Mr. Roman, did you exchange any discovery?

17 Like, for instance, did they make any
18 discovery requests upon you and you answered
19 those requests?

20 A. I don't believe so.

21 Q. And vice versa; did you send any
22 discovery requests to Mr. Roman?

23 A. No, we didn't get that far.

24 Q. Were there any depositions taken?

25 A. No.

1 Q. And this was filed, I believe, if you
2 look at the second-to-last page, June of 2013.

3 Is that correct?

4 A. Um-hum.

5 Q. Is that a "Yes"?

6 A. Yes.

7 Q. Do you believe this lawsuit was filed
8 before or after you called NIBCO?

9 A. I believe this was before I called
10 NIBCO. Although, the document you showed me,
11 didn't that say something about July 31st as the
12 date? So that would have been after.

13 Q. Do you believe that document is
14 accurate? I mean, does that --

15 A. I told you I've never seen it before,
16 so I don't know. It says what it says.

17 Q. As part of this lawsuit with
18 Mr. Roman, did you have any discussion about the
19 NIBCO products that he installed in your home?

20 A. Not really. They were not -- the
21 NIBCO products were not the reason why I sued
22 Rick. I sued Rick because he didn't finish doing
23 the work at my house that he agreed to do.

24 Q. Did you ever have a discussion with
25 Rick or anyone representing Roman Plumbing about

1 the leaks you were having in your home?

2 A. No. Let me rephrase that.

3 Rick and I had some very heated
4 discussions before I sued him, and all of this.

5 So, the issues I had with Rick, they
6 preceded and were really unrelated to the NIBCO
7 matter.

8 And then as the NIBCO matter started
9 to go along and along and along, you know, I
10 realized those issues.

11 So at some point when we were having a
12 discussion over the phone I might have said
13 something in anger to him about, you know, "Plus
14 the fittings you put in are leaking and are not
15 working either."

16 I don't specifically remember a
17 conversation. I know we didn't have an
18 in-depth one, but did I mention it at some point
19 when I was talking to him? Possibly.

20 Q. Did you ever ask Rick to take a look
21 at the fittings that were installed?

22 A. No. At that point in time my
23 confidence in Rick was zero. I would not let him
24 touch another thing in my house.

25 Q. In fact, that was the issue.

1 You were worried that he hadn't
2 touched a thing in your house. It was -- he had
3 put it on his other employees. Is that correct?

4 MR. KENNEY: Object to the form of the
5 question.

6 A. That's not exactly what I said.

7 Q. Well, I believe that you were
8 describing your main concern about Rick was that
9 he wasn't on site, rather, that the two other
10 plumbers were doing the installation.

11 Is that correct?

12 A. Right. He was there from time to
13 time.

14 (Roman Plumbing & Heating Contractors
15 Proposal, 6/11/10, is received and marked as
16 Exhibit Roman-6 for Identification.)

17 Q. I'm going to hand you what I've marked
18 Monica Exhibit 6.

19 MS. STEPHENS: And, again, I've Bates
20 labeled this myself. It has Cole-Monica
21 000010 and 11.

22 (Witness reviewing exhibit.)

23 Q. Do you recognize Monica Exhibit 6?

24 A. Yes, I do.

25 Q. And what is Monica-6?

1 A. This is the proposal document that
2 Rick gave to me before performing the work in my
3 house.

4 Q. And I believe the first -- actually,
5 both pages -- do you believe these two pages go
6 together? That's just what I assumed.

7 A. I do.

8 Q. They have the same date and they're on
9 the same letterhead?

10 A. Um-hum, yes.

11 Q. And they're dated June 11, 2010.
12 Is that correct?

13 A. That's correct.

14 Q. And they list a bunch of things in
15 handwriting. Is this your handwriting?

16 A. No. This is Mr. Roman's handwriting.

17 Q. And we see on the second page the
18 total is 18,900. Is that correct?

19 A. That's correct.

20 Q. Was there any other work added to your
21 agreement with Mr. Roman?

22 A. Yes, because the amount should be
23 19,800.

24 Q. I did notice that in the complaint
25 that -- that those numbers are a little bit

1 different.

2 A. Right.

3 Q. Do you know what work was added?

4 A. I believe it was install -- running a
5 gas line to our grill outside.

6 Q. Was that work completed?

7 A. Yes.

8 Q. Now, if we turn to the first page,
9 there's a bunch of things written on here. I
10 notice "Water heater with recirculating pump."

11 So Mr. Roman installed a water heater
12 in your home back in -- his company or someone
13 did back in 2010. Is that correct?

14 A. Yes.

15 Q. With a recirculating pump.

16 Do you understand what a recirculating
17 pump is?

18 A. I do not.

19 Q. Is that something that you asked for?

20 A. No.

21 Q. Do you know whether your house
22 currently has a recirculating pump?

23 A. We've had to replace the water heater,
24 so I do not know if it has a recirculating pump
25 or not.

1 Q. I was going to ask you about that
2 anyway. When did you replace the water heater?

3 A. Maybe about a year ago.

4 Q. So, today we're sitting here in --
5 it's almost December 2016, so you think about
6 November or December 2015 you replaced the water
7 heater?

8 A. Maybe a little bit longer than that,
9 but around that time frame.

10 Q. And who replaced the water heater?

11 A. The water heater was under warranty
12 from the company, so they required me to purchase
13 from a dealer that they told me to go to.

14 So I went to the dealer, purchased the
15 water heater, and then they reimbursed me
16 afterwards.

17 The water heater was installed -- the
18 second one was installed by Mr. Caprarola. I was
19 out of town again when we had issues with that.

20 Q. So your neighbor Jason installed the
21 replacement water heater. Is that correct?

22 A. His father.

23 Q. His father Joseph did it?

24 A. Right.

25 Q. What brand of water heater?

1 A. It starts with an "A".

2 Q. The same brand you had previous.

3 Is that correct?

4 A. Yeah, the same brand I had previously.

5 Q. And why did your water heater have to
6 be replaced?

7 A. I believe it was something with the --
8 like the spark igniter system, something to do
9 with the gas and the igniter.

10 Q. And you don't know whether you have a
11 recirculating pump attached to your new water
12 heater. Is that correct?

13 A. Are you referring to an expansion
14 tank?

15 Q. I'm talking about a recirculating pump
16 that recirculates water in your system.

17 A. I don't know.

18 Q. Do you have hot water fairly quickly
19 when you turn on the faucet in your home?

20 MR. KENNEY: Object to the form of the
21 question.

22 A. Yes.

23 Q. And if you have -- so if you don't
24 know if you have a recirculating pump or not, to
25 the extent there are any settings on that pump

1 you don't know what those are.

2 Is that correct?

3 A. I have no idea.

4 Q. You've probably never touched it?

5 A. I told you, I don't know what a
6 recirculating pump is.

7 Q. Okay. Does your house have a water
8 softening system?

9 A. It does.

10 Q. Was that installed by Mr. Roman?

11 A. No.

12 Q. Who installed that?

13 A. Automatic Water Supply & Conditioning,
14 I think, is the name of the company, in
15 Bernardsville.

16 Q. When was that installed?

17 A. Shortly after the plumbing -- when we
18 built the house.

19 Q. So the plumbing was installed by Roman
20 Plumbing, and then after that was done you
21 installed a water softening system.

22 Is that correct?

23 A. Correct. Rick did the prep work for
24 the water softening system.

25 Q. Why did you install a water softening

1 system in your new home?

2 A. Because it's very well known that in
3 my town we have hard water. Most homes in Warren
4 probably have a water softening system, and also
5 because it helps the life of your appliances.

6 Q. Since the water softening system was
7 installed by Automatic Water Supply &
8 Conditioning, has that system been serviced at
9 all?

10 A. Yes.

11 Q. By whom?

12 A. Automatic.

13 Q. How often was it serviced?

14 A. I think it's been serviced once or
15 twice. Those machines are pretty
16 self-sufficient.

17 You know, naturally every few months
18 you have to add salt, but other than that,
19 actually servicing the unit itself, they run
20 pretty self-sufficiently.

21 Q. You anticipated what my next question
22 is.

23 Have you done any work or done
24 anything to the softening system?

25 You said you add salt occasionally.

1 Is that correct?

2 A. Yeah. It has a tank to the side of it
3 that you put salt in and you have to replace that
4 as the level decreases.

5 Q. Do your faucets have aerators?

6 A. I do not think so. I don't know.

7 Again, I don't know what a faucet aerator is.

8 Is that something separate outside the
9 faucet? I don't know.

10 Q. Back to Exhibit 2, which is the
11 complaint, Paragraph 37, Page 9, the second and
12 third sentence says, "This particular form of
13 corrosion causes the interior of the brass
14 fitting to become plugged with corrosion product.
15 The fitting shown in this view is approximately
16 75 percent clogged which causes a significant
17 loss of water pressure."

18 Did your plumbing system have a loss
19 of water pressure?

20 A. Yes.

21 Q. When did you first notice that?

22 A. I don't recall.

23 Q. Was it before any of the leaks?

24 A. I don't recall.

25 Q. In what areas of the home do you

1 believe you had decreased water pressure?

2 A. Master shower, sprinkler system.

3 Q. You mean in your lawn?

4 A. Um-hum.

5 Q. Is that a "Yes"?

6 A. Yes, sorry. Master shower is the main
7 one that I remember.

8 Q. Do you still believe you have low
9 water pressure in your home?

10 A. Sometimes.

11 Q. Is there any particular time, like a
12 time of year, that you think it's different, time
13 of day?

14 A. When I get up to take a shower in the
15 morning sometimes the pressure is low.

16 Q. You mentioned an expansion tank.
17 Do you believe your house has an
18 expansion tank?

19 A. The hot water heater?

20 Q. Yes.

21 A. Yes, it has an expansion tank.

22 Q. Do you know what an expansion tank is?

23 A. Sort of.

24 Q. Okay. Give me your best shot.

25 A. What does it do?

1 Q. Yes.

2 A. I would probably say I don't know. I
3 do recognize it. I know what it looks like. I
4 know that I have one, but I don't know exactly
5 what it does.

6 Q. Whose idea was it to have an expansion
7 tank in your home?

8 A. Nobody's. I guess it came with the
9 hot water heater that Rick put it in. I've never
10 had any discussion about it.

11 Q. Back to Monica Exhibit 6, which is the
12 proposal from Roman Plumbing, on the second page
13 there are two items at the top.

14 The first one, I believe, says, "All
15 waste and vent piping to be PVC."

16 Is that your understanding?

17 A. Yes.

18 Q. Okay. And then, was that a discussion
19 you and Mr. Roman had or was that his
20 recommendation?

21 A. That was his recommendation.

22 Q. And what about the next entry?

23 It says, "All hot and cold water lines
24 to be PEX tubing."

25 Was that Mr. Roman's idea?

1 A. As I said to you before, he gave me
2 the option. He said, "Do you want all
3 traditional copper or do you want this new PEX
4 stuff?" And I said, "Well, what do you think
5 would be better?" And he said, "The PEX," so I
6 said, "Okay, use the PEX."

7 Q. Did you have any discussion with
8 Mr. Roman about any of the other pros and cons
9 between PEX and copper?

10 A. Not really. He might have given me a
11 30-second sales pitch on the PEX because, knowing
12 him being lazy, it was easier to work with.

13 Q. Is that something you believed about
14 Mr. Roman at the time, that he was lazy, or
15 something that you believe today?

16 A. Something I believe today. At the
17 time I thought he came very highly recommended.

18 Q. I believe I asked you this earlier,
19 but I want to make sure.

20 Did you have any discussions on the
21 type of fittings that were going to be included
22 in your plumbing system?

23 A. We did not.

24 Q. Now, this is what -- these exclusions
25 listed on the second page of Exhibit 6, it says,

1 "Permit fees, plumbing fixtures, main water and
2 sewer from city..." something like that?

3 A. "City mains."

4 Q. And that's what you were referring to
5 earlier, the plumbing fixtures. You guys
6 apparently agreed that you were going to supply
7 the fixtures. Is that correct?

8 A. Not exactly. He directed me to go to
9 a place called Kantor Plumbing Supply because
10 that was where he got a big discount.

11 And he asked my wife and I to go to
12 Kantor and work with the salesman there to pick
13 out all the fixtures, the faucets, the knobs, the
14 handles, all that sort of thing, shower heads,
15 and then we would purchase them through him at
16 his discounted price plus a markup of 15 percent.

17 Q. Okay.

18 A. So he picked up all the fixtures,
19 delivered them to the house and installed them.

20 Q. Do you believe Kantor Plumbing Supply
21 is also where he bought the PEX tubings and the
22 fittings that were in your home?

23 A. I have no idea about that.

24 Q. Did Mr. Roman, as a part of your
25 agreement with him, supply you with any sort of

1 warranty?

2 Did he say, "If you have any problems
3 in the first year, we'll come out and fix them,
4 no problem" or anything like that?

5 You're a lawyer, so you understand
6 what I mean by "warranty."

7 Did he give you a written warranty?

8 A. No.

9 Q. Did he offer you any sort of oral
10 warranty for this work?

11 A. Not that I recall.

12 Q. What was the -- in your lawsuit filed
13 against Mr. Roman, did you file any other
14 pleadings with the court?

15 A. No.

16 Q. So the complaint was the only thing
17 you filed in court?

18 A. Yes.

19 Q. Do you believe Mr. Roman filed an
20 answer?

21 A. He did.

22 Q. Do you believe Mr. Roman or the
23 attorney working on his behalf filed anything
24 else with the court?

25 A. I was served with a copy of the

1 Answer, but I don't know if there was anything
2 else that was served.

3 We did enter into a release settlement
4 agreement. You know, once that was signed off on
5 his attorney may have filed that with the court
6 to close the case.

7 Q. Now that you mention it, so how was
8 your lawsuit with Mr. Roman and Roman Plumbing &
9 Heating resolved?

10 A. We settled out of court.

11 Q. Do you know where the funding for the
12 settlement came from?

13 A. Yes, I do.

14 Q. And where?

15 A. \$10,000 came from his insurance
16 company, and 2,750 came out of his pocket.

17 Q. And at the time that that release was
18 signed, had you retained counsel in this lawsuit?

19 A. Yes.

20 Q. That's Mr. Sauder?

21 A. Yes.

22 Q. Did you ever make any insurance claims
23 related to the water leaks in your home?

24 A. I did contact my insurance company.
25 I don't know if -- I contacted them and noted

1 what was going on, but the deductible, I believe,
2 at the time was either \$1,000 or \$1,500.

3 So I don't know if we actually -- I
4 think maybe with one of the -- one of the leaks
5 we did go through with a claim for the insurance,
6 but we may not have actually even gotten to that
7 point because the deductible was very high and I
8 just didn't want to go down that path.

9 Q. What insurance company do you believe
10 you may have contacted?

11 A. It would have either been Allstate or
12 New Jersey Manufacturers. At one point in time
13 we switched companies, but I don't recall when
14 that was. My wife handles all of that.

15 Q. So if you went and asked her, she
16 might have better information on who your
17 insurance company was at the time?

18 A. I don't know. I provided the New
19 Jersey Manufacturers policy numbers to my
20 counsel. I'm sure we could look that up and
21 figure out the time.

22 Q. I have been provided with that
23 information.

24 What about the Allstate plan?

25 Would your wife know better whether

1 you had a policy with Allstate at the time of
2 these leaks?

3 A. She wouldn't know any better than me.
4 We could go back and look.

5 Q. You just said she handles this stuff,
6 so I'm just trying to understand where the best
7 source of this information could come from.

8 To date I have been given policy
9 numbers for New Jersey Manufacturers, but not
10 Allstate.

11 A. Okay. Well, if you look at the policy
12 number for New Jersey Manufacturers I would
13 imagine that you could see when that started and
14 be able to determine whether --

15 Q. I have not been given an actual
16 policy. I want you to understand that. I've
17 been given policy numbers. Those are just
18 numbers, okay, at this point, and I don't have a
19 copy of your policy from you or your counsel.

20 So, again, I'm just trying to
21 understand where I can find the best information
22 possible, okay?

23 A. The best information would be for me
24 to call Allstate and find out when our coverage
25 stopped with them.

1 Q. And I would ask you to do that,
2 please.

3 So you contacted an insurance company,
4 you don't recall which one it is, is that
5 correct, or you may have?

6 A. Correct.

7 Q. And you may have started a claim with
8 one of them, but did not pursue it to the point
9 where they ever sent you any reimbursement.

10 Is that correct?

11 A. I believe that's correct.

12 Q. I believe at one point in time you had
13 the water at your home tested.

14 Is that correct?

15 A. Yes.

16 Q. And when was that testing done?

17 A. About two years ago.

18 Q. So, 2014 or 2015?

19 A. Yes.

20 Q. And why did you have your water
21 tested?

22 A. Because we had a ten-gallon fish tank
23 and our fish were dying, so I wanted to make sure
24 that everything was okay with the water.

25 Q. Did the water for that fish tank come

1 from just your tap?

2 A. Yes.

3 Q. Is it a fresh water fish tank?

4 A. Yes.

5 Q. Who tested the water?

6 A. New Jersey American Water.

7 Q. And what were the results of that
8 testing?

9 A. Everything was fine. There were no
10 results that were out of range, out of normal
11 range.

12 Q. Did you receive a written report or
13 some sort of written results as a result of that
14 testing?

15 A. I believe I did receive a report in
16 the mail.

17 Q. Do you still have a copy of that?

18 A. No.

19 Q. After you discovered that the water
20 was apparently okay, have you guys refilled the
21 fish tank and gotten new fish?

22 A. Yes, we did after that.

23 Q. So, you currently have fish living in
24 your ten-gallon fish tank again?

25 A. No.

1 Q. Did they die again?

2 A. The last guy made it for three years
3 and just recently passed away.

4 Q. I'm sorry to hear that. That's not
5 what I was expecting.

6 So, after the -- did all of the fish
7 die or just some of them? I was confused.

8 A. Some of them, not all of them.

9 Q. You had some fish having some health
10 issues, some of them died. You had the water
11 tested. After that came back okay you still had
12 fish, but, unfortunately, you lost the last one
13 for now. Is that correct?

14 A. That's correct. I went to Petco where
15 I bought the fish and the tank and brought them
16 samples.

17 And they told me that I had like --
18 this is going to sound like stupid, but I had 15
19 fish in a ten-gallon tank, which is apparently
20 way too many.

21 So they told me that the ammonia level
22 was too high due to their feces and all that
23 stuff, so I had to reduce the number of fish.
24 That's what they told me the problem was why they
25 were dying.

1 Q. That's actually kind of funny in its
2 own way.

3 A. I got too excited, I guess.

4 Q. No, no. Just that their environment
5 had too much ammonia because they were all
6 digesting too much food.

7 I didn't mean to make light of your
8 fish dying.

9 A. No, no, that's okay.

10 (Release, 12/4/13, Between Roman Plumbing
11 & Heating Contracting and Monica is received
12 and marked as Exhibit Monica-7 for
13 Identification.)

14 MS. STEPHENS: I'm going to go ahead
15 and introduce Monica Exhibit 7.

16 And, again, I've marked this myself
17 with Bates labeled Cole-Monica 000012 and 13.

18 Q. Let me know if you recognize Monica
19 Exhibit 7.

20 (Witness reviewing exhibit.)

21 A. I do.

22 Q. What is Monica Exhibit 7?

23 A. This was a release that was prepared
24 by Mr. Roman's attorney that he asked me to sign
25 in exchange for the payment of \$12,750.

1 Q. So this is the release you were
2 referring to earlier about how your lawsuit with
3 Roman Plumbing was resolved. Is that correct?

4 A. That's correct.

5 Q. And it's dated, it appears,
6 December 4, 2013. Is that correct?

7 A. Yup.

8 Q. At the time this release was signed,
9 had you retained counsel in this litigation?

10 MR. KENNEY: In the current
11 litigation?

12 MS. STEPHENS: Yes, sorry.

13 Q. The litigation against NIBCO?

14 A. I believe so, yes.

15 Q. Now, I notice in Paragraph 1 at the
16 end of the last sentence it says, "I do not
17 release any potential claims against NIBCO and/or
18 any other persons, companies or entities that may
19 be responsible for the damage to the home located
20 at 12 Hillcrest Boulevard, Warren, New Jersey,
21 07059."

22 Who added that clause to the
23 settlement?

24 A. Well, I didn't draft this document.

25 Q. Did you ask for that particular --

1 that type of language to be added?

2 A. I believe I did, yes.

3 Q. And why was that?

4 A. Because we were starting the process
5 of beginning with the NIBCO litigation, and I
6 believe that the issues that I had with Mr. Roman
7 were very separate and apart from the issues that
8 were unfolding with NIBCO.

9 Q. So you don't believe that any of the
10 issues -- the leaks that we've been discussing
11 today in your home were caused by Mr. Roman or
12 the work he did?

13 A. I'm not an expert, but I do not
14 believe so. I mean, installing these fittings is
15 not rocket science. My neighbor and I, as I told
16 you, we did the last one together in my basement.
17 It takes about 45 seconds to do, so I don't think
18 that had anything to do with Roman.

19 Q. What type of fitting did you install
20 with your neighbor?

21 A. I don't recall.

22 Q. Was it a brass fitting or a plastic
23 fitting?

24 A. I said I don't recall. I'm happy to
25 take a picture of it and send it to you if my

1 counsel asks me to do that, but I don't recall
2 right now.

3 Q. Did you use some sort of tool as part
4 of the installation?

5 A. I did.

6 Q. What kind of tool did you use?

7 A. A crimping tool.

8 Q. Was that your crimping tool?

9 A. Yes.

10 Q. You went out and bought it?

11 A. Yes.

12 Q. What brand is that crimping tool?

13 A. No idea.

14 Q. Where did you buy it?

15 A. Home Depot.

16 Q. When did you buy it?

17 A. The first time that Joseph Caprarola
18 came he asked if I had one and I said no, and I
19 went out and got one.

20 So whenever he first -- the leak that
21 he first fixed would have been when I went out
22 and purchased it.

23 Q. Do you still have that tool?

24 A. I do.

25 Q. When you helped Jason install this

1 fixture at your house that you said took about 45
2 seconds, did either of you look at any sort of
3 manual or instructions on how to do that?

4 MR. KENNEY: I'm sorry did you mean
5 fittings? You said "fixtures."

6 MS. STEPHENS: I meant fittings.

7 A. I didn't say that that one took 45
8 seconds. I made a general statement that they're
9 very easy to install.

10 To answer your question, when we
11 installed it we did not look at a manual.

12 Q. Had you ever installed a fitting
13 before in a plumbing system?

14 A. Yes, a crimping ring, sure.

15 Q. When?

16 A. Over the years just fixing tubes here
17 and there; my house, my parents' house.

18 Q. Were those PEX tubes?

19 A. Possibly.

20 Q. Were they plastic or were they metal?

21 A. We're not talking about a specific
22 time here. Have I crimped a crimping ring on a
23 tube of some sort in my life at some point before
24 this? Yes, I have. Do I recall specific
25 examples or dates? No, I don't.

1 Q. You believe you might have done that
2 at your parents' house in the past.

3 Is that correct?

4 A. I may have.

5 Q. And you believe they have copper
6 plumbing. Is that correct?

7 A. No, I did not say that. I believe
8 they have PEX.

9 Q. You believe your parents have PEX in
10 their home?

11 A. Um-hum.

12 Q. Is that a "Yes"?

13 A. Yes.

14 Q. When was that installed?

15 A. They put an addition on their house
16 around 2006 -- 2005, 2006, so it would have been
17 sometime around then.

18 Q. Who installed that plumbing in the
19 addition at your parents' house?

20 A. The contractor's name was Bill Keyes.

21 Q. Was he also the plumber?

22 A. Yeah.

23 Q. Do you believe -- and you believe you
24 might have at some point crimped a ring in that
25 plumbing in the addition in your parents' house.

1 Is that what you're saying?

2 A. No.

3 Q. I'm just trying to understand what you
4 told me previously, that you probably have
5 crimped a ring on PEX tubing before in your life,
6 before this time with Jason.

7 When was that?

8 A. If you asked me the last time that I
9 replaced a light bulb in my house I probably
10 wouldn't be able to tell you. It's the same kind
11 of thing, I don't recall any specific situations.

12 But I would consider at some point in
13 time -- I'm fairly handy -- that I crimped
14 something to something else; whether it was PEX,
15 whether it was copper, what it was, where it was,
16 I don't know.

17 Q. You believe you can just crimp a ring
18 onto a copper tubing onto a fitting?

19 A. I didn't say that.

20 Q. Well, how did you -- you're saying
21 you're fairly handy.

22 How do you join a copper pipe piece of
23 plumbing to a fitting?

24 A. It has to be soldered.

25 Q. So in that particular instance you

1 wouldn't use just a crimping tool, would you?

2 A. No.

3 Q. So where else might you have, at some
4 point in your life, crimped PEX tubing onto a
5 fitting?

6 A. I don't know.

7 Q. Do you have any training?

8 A. No.

9 Q. Have you ever looked in any manuals on
10 how to do that?

11 A. I might have looked at a manual on the
12 internet, but not that I actively recall, no.

13 Q. Have you ever looked at the
14 installation instructions for NIBCO PEX tubing or
15 its related fittings?

16 A. No.

17 Q. Are you familiar with any other brands
18 that manufacture or sell PEX products?

19 A. I am not.

20 Q. When you discussed with Mr. Roman --
21 well, if you discussed this with Mr. Roman -- let
22 me start over.

23 We saw in his proposal that Mr. Roman
24 wrote "PEX tubing," and we'll refer to that as
25 the material that he was planning to use.

1 Did he ever discuss with you whether
2 he had any issues using that material in other
3 homes or anything like that?

4 A. No.

5 Q. Do you know what type of training or
6 experience Roman -- Mr. Roman or his employees
7 had installing PEX products in general?

8 A. I have absolutely no idea.

9 Q. What about NIBCO PEX products?

10 A. No idea.

11 Q. Do you know where they got the NIBCO
12 PEX products that were installed in your home?

13 A. I already told you, I don't know that.

14 Q. Do you know how those products were
15 stored before they were installed in your home?

16 A. I have no idea.

17 Q. When Mr. Roman was done -- well, at
18 any point when Mr. Roman was working on the
19 plumbing at your house or after he was done, did
20 he ever give you any documents related to NIBCO?

21 A. No.

22 Q. Did he ever tell you about the
23 warranty on NIBCO products?

24 A. No.

25 Q. Have you ever seen the NIBCO warranty?

1 A. I don't believe so. I might have,
2 poking around in the internet on NIBCO's website,
3 but I don't believe I did.

4 MS. STEPHENS: Let's take a break.
5 (Recess.)
6

7 BY MS. STEPHENS:

8 Q. We're back on the record.
9 Mr. Monica, you understand you're
10 still under oath?

11 A. Yes, I do.

12 Q. Are there any answers you gave
13 previously in this deposition that you would like
14 to clarify at this time after we've taken this
15 break?

16 A. No.

17 Q. We were discussing before the break
18 you mentioned that your parents had an addition
19 added onto their house and had PEX installed for
20 the plumbing.

21 Were you aware that they had PEX
22 installed before you became involved in this
23 lawsuit?

24 A. I mean, I saw it as it was going up in
25 the house, but I mean I was still in law school

1 at that point in time.

2 Q. Do you know whether your parents have
3 had any leaks or issues with the plumbing -- the
4 PEX plumbing that's been installed?

5 A. They have not.

6 Q. Do you know of anyone else that's had
7 PEX installed or PEX products installed for
8 plumbing system and have had leaks or other
9 issues?

10 A. The other plaintiffs in this case.

11 Q. Do you know any of those other
12 plaintiffs?

13 A. I do not.

14 Q. You just know their names?

15 A. Yes. The only other people I would be
16 aware of is that couple in Chatham, but, again, I
17 don't know their names.

18 Q. In this lawsuit which products --
19 NIBCO products do you believe failed in your
20 house?

21 A. I mean, I'm not an expert, so I don't
22 know whether it's the fitting or the tubing or a
23 combination of both.

24 As a layperson I know that when I look
25 at the fittings that are exposed they don't look

1 right to me.

2 I have ones -- you can walk around in
3 my basement now and look at the ones in the
4 ceiling and there are some that have, over the
5 years, grown this -- whatever that stuff is -- on
6 the outside of them.

7 Q. Has any of the tubing in the house, to
8 your knowledge, ever split or been damaged?

9 MR. KENNEY: Object to the form of the
10 question.

11 A. To the point where I could physically
12 observe it? Not that I know of.

13 And to clarify there, when we cut the
14 tubing open to fix the fittings, the tubing often
15 looks the same as the inside of that elbow
16 fitting that's pictured in the complaint.

17 Q. So it has the same sort of meringue on
18 it. Is that correct?

19 A. That crusty material. I don't know
20 what you would call it. It looks like a clogged
21 artery to me.

22 Q. Do you know whether you submitted any
23 of the tubing from your home for testing?

24 A. Some of the fittings that we
25 submitted, I believe they were submitted with the

1 fitting, a small piece of the tubing, and the
2 crimping ring together.

3 Q. So the whole connection?

4 A. The whole connection, yes. I don't
5 believe that I've submitted any large piece of
6 just tubing.

7 Q. And at least do you believe all the
8 leaks in your home, the source of them was at
9 those connection points. Is that correct?

10 A. That I can visibly observe, yes.

11 Q. Are you claiming in this lawsuit that
12 the clamps installed in your home are defective
13 in any way?

14 MR. KENNEY: Objection to the extent
15 it calls for a legal conclusion or expert
16 testimony, but you can answer.

17 A. I have no idea. I'm not an expert
18 lawyer.

19 Q. So you don't know what your claims
20 are?

21 A. I know what the claims are in the
22 complaint.

23 MR. KENNEY: Object to that
24 characterization.

25 Q. So you would rely on the complaint as

1 far as what you're -- what you are claiming
2 caused the issues in your home?

3 A. What I would rely on is our -- are the
4 facts that are in the complaint, the allegations
5 that are in the complaint.

6 Our experts' opinions; that's not
7 something that I'm equipped to answer.

8 Q. Let's go to Exhibit 2, which is the
9 complaint. Let's go to Paragraph 39.

10 I'm not going to read Paragraph 39
11 back in the record fully, but it says as part of
12 this paragraph that "Plaintiff Monica contacted
13 NIBCO and requested replacement of defective
14 NIBCO PEX fittings under the terms of the express
15 warranty." Do you see that part?

16 A. I do.

17 Q. Is that the phone call that we've
18 talked about already in this deposition?

19 A. It is.

20 Q. Okay. And as part of that phone call
21 you believe you requested replacement of the
22 defective PEX fittings. Is that correct?

23 A. I did.

24 Q. "Under the terms of the express
25 warranty." Do you see that part?

1 A. I do.

2 Q. At the time you made that phone call
3 were you aware of what the NIBCO warranty was?

4 A. I'm not sure.

5 Q. Are you aware today what the terms of
6 the NIBCO warranty are?

7 A. No.

8 Q. Do you believe you fulfilled your
9 warranty obligations under the NIBCO warranty?

10 MR. KENNEY: Object to the extent it
11 calls for a legal conclusion, but you can
12 answer.

13 A. Yes.

14 Q. Okay. Well, let's flip to the last
15 page of Exhibit 2. Again, this is part of the
16 complaint filed by your counsel on June 19, 2015.

17 Do you see it says, "NIBCO PEX
18 Warranty"?

19 A. I do.

20 Q. I'll give you a chance to look this
21 over, but have you ever seen this warranty before
22 or something like it?

23 (Witness reviewing exhibit.)

24 A. Yes.

25 Q. When?

1 A. When I was reviewing the original
2 complaint before it was filed.

3 Q. And do you believe that was the first
4 time you had ever seen the NIBCO PEX warranty?

5 A. I believe it probably was.

6 Q. Look at the second paragraph. Now,
7 I'm not going to read the entire thing, it's
8 quite lengthy, but it says, "In the event any
9 defect occurs..."

10 Do you see that paragraph?

11 A. Um-hum.

12 Q. "Yes"?

13 A. Yes, I do.

14 Q. And I think it's the second sentence.
15 It says, "The owner will be instructed to return
16 said tubes, fittings, or accessories at the
17 owner's expense to NIBCO, Inc. or an authorized
18 representative for inspection."

19 Do you believe that you were asked to
20 return "said tubes, fittings or accessories" to
21 NIBCO?

22 A. I was not asked to do that.

23 Q. So you don't believe that NIBCO sent
24 you that product return authorization that we saw
25 earlier?

1 A. I testified honestly. I don't recall
2 ever seeing that document before. I'm not saying
3 that they didn't, but I do not recall ever seeing
4 that.

5 Q. Okay. Are you aware that, as part of
6 that lawsuit, you produced to us a copy of that
7 same document; not the e-mail attached to it, but
8 the document itself, that product return
9 authorization? You looked at it today.

10 A. I don't know if I personally did or if
11 another plaintiff did or if our attorneys got it
12 from somewhere else.

13 Q. It was associated specifically with
14 you as part of the production, but you don't
15 recall that at all?

16 And it had your name on it.

17 A. I understand what you're trying to do
18 and --

19 Q. I'm not trying to do anything. I'm
20 just trying to ask questions.

21 A. And I'm answering you truthfully, that
22 I don't recall seeing that document.

23 I'm not saying that it was not sent to
24 me; it may have been, but I do not recall seeing
25 it.

1 Q. And so if you don't recall it being
2 sent to you, you don't know how it got to your
3 plaintiffs -- to your attorneys and turned over
4 to us as part of this lawsuit; you don't know?

5 A. I don't know for sure, no. I could
6 have just forwarded it to them. It could have
7 come from somewhere else. I don't know.

8 Q. Where else could it have come from?

9 A. I don't know.

10 Q. So, to your knowledge, none of the
11 fittings from your home have ever been sent to
12 NIBCO for inspection?

13 A. As far as I'm aware, no.

14 But NIBCO did have experts come out to
15 my house and do testing on them and the water and
16 all that other stuff.

17 Q. Did you ever send any fittings to
18 NIBCO for inspection?

19 A. No.

20 Q. Was your home inspected -- okay.

21 You mentioned the inspection that
22 occurred in your home where experts associated
23 with NIBCO came out.

24 Do you recall that inspection?

25 A. I do.

1 Q. Was your house inspected prior to that
2 by someone else?

3 A. For purposes of this lawsuit?

4 Q. Yes.

5 A. No.

6 Q. So, has an expert associated with your
7 attorneys in this law firm ever visited your
8 house?

9 A. Has an expert visited my house?

10 Q. Yes.

11 A. No.

12 Q. So, has Cynthia Smith ever visited
13 your house?

14 A. No.

15 Q. To your knowledge, have the fittings
16 that have been removed from your house been
17 tested?

18 A. Yes.

19 Q. Do you know the results of that
20 testing?

21 A. I do not.

22 Q. Still looking at that NIBCO warranty
23 on the last page of Exhibit 2, do you see the
24 capital letters in the third paragraph?

25 It's entirely capitalized, I should

1 say.

2 A. I do see that.

3 Q. You see it says, "In order for this
4 limited warranty to apply, the above-referenced
5 products must be installed by a licensed
6 professional plumber in accordance with NIBCO
7 installation instructions and in compliance with
8 all applicable code requirements"?

9 A. I see that.

10 Q. And "Failure to do so will void all
11 applicable warranties."

12 Do you see that?

13 A. I do.

14 Q. Do you believe that the products
15 installed -- NIBCO products installed in your
16 home were installed by licensed professional
17 plumbers in accordance with all NIBCO
18 installation instructions?

19 MR. KENNEY: Object to the extent
20 it requires expert testimony, but you
21 can answer if you know.

22 A. When Mr. Roman filled out the plumbing
23 subcode permit application, which he filled out
24 himself, he put down his New Jersey master
25 plumber license number, so I would take that to

1 believe that he is a licensed plumber.

2 And he brought the NIBCO products to
3 my house, so I would assume that he was familiar
4 with them. He never once told me that this was
5 the first time he was using it or he wasn't
6 familiar with it, but I mean I'm not privy to
7 that information.

8 As far as I'm aware, yes.

9 Q. And you don't know the brand of the
10 fitting that you installed in your home, do you?

11 A. No.

12 Q. So you wouldn't know -- it could be
13 NIBCO. Is that possible?

14 A. It's possible. But it's pretty
15 unlikely if I saw something that had a NIBCO sign
16 on it I probably wouldn't purchase it.

17 Q. And did you refer -- and I believe I
18 asked you this, but did you refer to any
19 installation instructions when you installed that
20 fitting?

21 A. I want you to understand one thing
22 very clearly. When you have one of these leaks
23 in your house, okay, what happens is the longer
24 the leak is transpiring the more damage that
25 takes place; meaning more sheetrock gets

1 saturated, more crown molding gets saturated,
2 more carpet gets wet, more couches get wet.

3 When I fixed the last one in my house
4 that wasn't even leaking on my own I don't think
5 about things like do I need to be a master
6 plumber?

7 I think about how do I get water to
8 stop from running or to prevent something from
9 happening. I go out, get the stuff I need to fix
10 it, and fix it.

11 MS. STEPHENS: Strike that as
12 nonresponsive.

13 MR. KENNEY: I object to that.

14 MS. STEPHENS: My question was -- and
15 I believe the record will show -- I asked him
16 if he looked at any installation manuals or
17 not when he installed the fittings in his own
18 home.

19 Q. What's the answer, yes or no?

20 MR. KENNEY: I'm still allowed to make
21 my objection.

22 Again, I'm objecting to her -- giving
23 the "strike that" response.

24 You can answer the question to the
25 extent you understand it.

1 A. I believe you already asked me that
2 and I answered it, and the answer is no.

3 Q. Do you believe your plumbing system
4 was inspected by anyone before it was put into
5 service?

6 A. Yes, it was inspected by my town
7 plumbing subcode inspector.

8 Q. And do you know what that inspection
9 involved?

10 A. Vaguely. There were multiple parts of
11 inspections, multiple steps throughout the
12 process.

13 Q. And specifically, as to the plumbing,
14 what did they do as part of that inspection?

15 A. Like I said, there were multiple steps
16 to the process.

17 Q. What was each step?

18 A. You have to -- once you get to certain
19 hurdles you have to pass inspections for
20 different things; like connecting from city water
21 to your house, when you do the roughing, when you
22 do the finishing, those sort of things, different
23 milestones.

24 Q. And at each point of this inspection
25 process, when the inspectors came out, were there

1 any issues at any of those milestones?

2 MR. KENNEY: Object to the form of the
3 question.

4 A. I was not there for most of the
5 plumbing inspections; Rick was, and he, himself,
6 came when there were inspections.

7 And I don't recall any specific things
8 that we failed inspection for going along in the
9 process.

10 Q. Other than -- I think we classified
11 them as five leaks and this other fitting that
12 you replaced, have you had any other plumbing
13 issues in your home?

14 MR. KENNEY: Object to the form of the
15 question.

16 Q. I guess I should also add the water
17 heater.

18 MR. KENNEY: Same objection.

19 A. No.

20 Q. So you have not had any other leaks in
21 other areas?

22 A. No.

23 (Plaintiff James Monica's Objections
24 and Responses to Defendant NIBCO, Inc.'s
25 First Set of Interrogatories is received and

1 marked as Exhibit Monica-3 for
2 Identification.)

3 Q. I'm going to hand you what's been
4 marked as Monica Exhibit 3.

5 Take a look at Exhibit 3 and let me
6 know when you're ready to answer questions.

7 (Witness reviewing exhibit.)

8 A. Okay.

9 Q. Does Exhibit 3 look familiar to you?

10 A. Yes.

11 Q. Okay. And you see -- again, you're a
12 lawyer. You see the caption on the front page
13 related to this lawsuit and it says "Plaintiff
14 James Monica's Objections and Responses to
15 Defendant NIBCO Inc.'s First Set of
16 Interrogatories"?

17 Do you see that?

18 A. Yes, I do.

19 Q. And I believe you said earlier you
20 might have provided information for these, but
21 you -- I mean, you didn't draft like all the
22 objections and things like that.

23 Is that what you meant?

24 A. That is correct.

25 Q. I want to look at Interrogatory No. 5,

1 which starts on Page 4, and then your response is
2 on the next page.

3 (Witness reviewing exhibit.)

4 Q. Now, this question asks about -- it
5 says, "State in detail what damages you claim
6 were sustained as a result of the incidents upon
7 which this action is based, including the dates
8 of any alleged incidents, the dates of any
9 repairs, the names of those individuals
10 performing the repairs, and an itemized listing
11 of all charges."

12 And then the answer is below.

13 And I know that a lot of it, again, is
14 a part of an objection.

15 Do you see the part where it says,
16 "Plaintiff refers to Rule 26(a)(1)"?

17 A. Yes.

18 Q. Okay. And then it says,
19 "... (a)(1) Disclosure submitted to the Defendant
20 on May 18, 2014 and the documents produced by
21 Plaintiff to date."

22 What documents produced to date by you
23 in this lawsuit provide any information regarding
24 the dates of the alleged incidents, the dates of
25 repairs, the names of individuals performing the

1 repairs or any itemized listing of all charges?

2 A. If we supplied the invoices from
3 Palazzo.

4 Q. You don't know whether those have been
5 produced or not?

6 A. Again, if I had them at the time that
7 the discovery request was made, if they were
8 still in my possession, I would have produced
9 whatever I had.

10 I've produced all documents that are
11 in my possession to date.

12 Q. So can you provide me with an itemized
13 listing of all the charges you've incurred as a
14 result of the leaks at your home?

15 A. You want me to take a pen and paper
16 and do that?

17 Q. I would love that.

18 A. I mean, I --

19 MR. KENNEY: Objection.

20 You don't need to write anything down.

21 A. I would gather I could do that.

22 Have we produced an itemized listing?

23 I don't know.

24 Q. I would represent to you that have
25 not.

1 A. Okay.

2 Q. So I'm going to ask that you do do
3 that because we've discussed various charges and
4 things today, but you've been kind of
5 guesstimating on the amount, so I believe we're
6 entitled to know this information and I don't
7 believe it's been produced to date.

8 What damages are you claiming from
9 NIBCO in this lawsuit?

10 MR. KENNEY: I'm going to object to
11 the extent it calls for a legal conclusion
12 and to the extent it calls for expert
13 testimony, but you can answer to the
14 extent you understand.

15 A. I am seeking repair of the entire
16 plumbing system, both fittings that have ruptured
17 to date and tubing and those that have not, but
18 may.

19 The plumbing system in the NIBCO
20 products in my house are a ticking time bomb, any
21 one of them could rupture at any point in time,
22 so I'm seeking to have the plumbing redone.

23 Q. Have you attempted to get an estimate
24 of having the plumbing redone in your home?

25 A. No.

1 Q. Do you know how much that would cost?
2 In your mind, do you know how much you think that
3 would cost?

4 MR. KENNEY: Object to the form of the
5 question.

6 A. I think it would be pretty significant
7 because it's a finished house now. The walls
8 will all have to be ripped up, sheetrock taken
9 out.

10 It's not just the cost of repairing
11 the plumbing, it's the cost of all that labor,
12 time, sheetrock, spackling, painting, crown
13 molding, drying, inconvenience, un-usage.

14 Q. Let's go look at Exhibit 2, which is
15 the complaint. Let's go to Paragraph 41.

16 It says that you've suffered an
17 "...ascertainable loss as a result of Defendant's
18 admissions and misrepresentations associated with
19 the PEX product, including, but not limited to,
20 out-of-pocket loss associated with catastrophic
21 plumbing failures and attempted repairs of such
22 within his home."

23 Do you see that?

24 A. I do.

25 Q. What ascertainable loss have you

1 incurred?

2 MR. KENNEY: Object to the extent it
3 calls for a legal conclusion or expert
4 testimony, but you can answer it to the
5 extent you understand.

6 A. Again, with each one of these leaks
7 there is the material and labor associated with
8 the plumbing, getting that fixed.

9 There is also the down time in getting
10 the plumber out there to fix it because the
11 entire water system has to be shut off.

12 There is carpentry involved, painting,
13 taping, spackling, replacement of crown molding,
14 cleaning of carpets, cleaning damaged couches.

15 Q. How much to date have you spent on
16 cleaning your carpet and couches as a result of
17 these leaks?

18 A. The family room carpet we had
19 professionally cleaned one time. I believe that
20 was approximately \$500.

21 The basement carpet we had cleaned. I
22 believe that was a little bit less, maybe around
23 \$300 or \$400. It was a small area.

24 And the couch, we have not repaired
25 the couch or anything. The water stains are

1 still there.

2 Q. Do you have receipts or invoices
3 associated with the carpet cleaning that you just
4 mentioned?

5 A. Whatever documents I have I've given
6 over, so if they weren't given over I probably
7 don't have them.

8 Q. Who did the carpet cleaning?

9 A. I believe it was somebody that our
10 insurance company, New Jersey Manufacturers,
11 sent, but I don't know their name.

12 Q. So your insurance company did do
13 something associated with some of the property
14 damage. Is that correct?

15 A. Well, I don't know what you mean by
16 "did" but --

17 Q. Well, insurance companies, at least in
18 my experience, don't send somebody to do
19 something unless they believe -- unless you make
20 a claim, and then they pursue that.

21 So you believe New Jersey
22 Manufacturers sent someone to clean the carpets
23 in your house. Is that correct?

24 A. No. I believe New Jersey
25 Manufacturers recommended somebody to clean the

1 carpet. Whether or not that was part of a claim,
2 I don't know.

3 Q. Who would know that?

4 A. New Jersey Manufacturers.

5 Q. You mentioned the down time associated
6 with getting these plumbing leaks fixed.

7 Can you put a dollar figure on that
8 down time?

9 A. No.

10 Q. In each instance did all of this cost,
11 was it different with each leak?

12 A. Yes.

13 Q. And all the leaks generally occurred
14 in different areas of the house.

15 Is that correct?

16 MR. KENNEY: Object to the form.

17 Q. You did have a connection -- actually,
18 I take that back. We had that one fitting that
19 was replaced twice. Is that correct?

20 A. Right.

21 Q. And then the other fittings, they were
22 all different connection points at least?

23 A. Yes.

24 Q. Let's look at Interrogatory question
25 number six and your response.

1 Without having to read it all, it
2 generally asks for where the PEX products that
3 were previously installed in your residence,
4 their current status.

5 Do you see your answer down there?

6 It says, "Plaintiff disposed of the
7 first defective fitting because he was not aware
8 of any systemic problems with the NIBCO PEX
9 product at the time."

10 Now, previously in this deposition you
11 told me you believe you kept that one.

12 Do you believe that's correct or is
13 this Interrogatory response correct?

14 A. The Interrogatory response is correct.

15 Q. So you do believe that first defective
16 fitting was disposed of by you or whoever took it
17 out of your house. Is that correct?

18 A. Yes.

19 Q. Let's go to Page 7, Interrogatory
20 No. 13. It generally asks about statements or
21 people with knowledge about the basis of your
22 complaint.

23 And do you see in the answer it refers
24 to "Adams Homes"?

25 A. I see that.

1 Q. Does that mean something to you?

2 Is Adams Homes associated with your
3 house?

4 A. To be honest with you, this has --
5 this must have to do with another plaintiff
6 because I have no idea what Adams Homes is.

7 Q. And you were the general contractor on
8 your house. Is that correct?

9 A. Yes.

10 Q. Now, it says below that "Claims
11 investigation is ongoing and discovery is
12 continuing. Plaintiff reserves the right to
13 supplement this response up to and including the
14 time of trial."

15 Are you aware of anyone else -- I
16 mean, other than Adams Homes and plaintiffs'
17 immediate family -- who have knowledge of the
18 basis of your complaint?

19 I mean, because there's no other
20 people -- other than referring to your immediate
21 family, whose names I know, this doesn't name
22 anybody else.

23 And we've talked about some people
24 today, right? We've got Roman Plumbing, we've
25 got the various carpenters and plumbers who have

1 worked on your house.

2 Is that correct?

3 A. Um-hum.

4 Q. Is that a "Yes"?

5 A. Yes.

6 Q. Anybody else you can think of?

7 A. No.

8 Q. Have you discussed -- when you say
9 "plaintiff's immediately family," are you also
10 referring to like your parents, who lived next
11 door?

12 A. Oh, yeah, of course, my mother and
13 dad, they're aware of what's going on. I haven't
14 discussed the lawsuit with them very much, but...

15 Q. But they were aware of the leaks and
16 that you were having problems with your plumbing?

17 A. Yes.

18 Q. Let's go to Page 10, Interrogatory
19 No. 20. Why don't you go ahead and read the
20 question and the response and I'll ask you a
21 couple of questions.

22 (Witness reviewing exhibit.)

23 A. Okay.

24 Q. Now, at least in your -- the response
25 it says, "Plaintiff spoke with a NIBCO employee

1 on the telephone after the second leak in
2 approximately the spring of 2014."

3 Do you see that?

4 A. Um-hum, yes, I do.

5 Q. Do you agree with that response or do
6 you think that that's still accurate?

7 A. Whatever is in here date-wise would be
8 more accurate than what I provided. I mean, this
9 is stuff that happened three, four years ago.

10 Q. I understand that. I'm just trying to
11 -- you know, the dates that we discussed today of
12 the leaks all were 2012 through 2013, and we did
13 not discuss 2014 at all, so I'm trying to
14 understand the timeline accurately.

15 A. This date strikes me as a little bit
16 off, but if it's not a typo then that's what I
17 would have told my counsel that when this would
18 have happened, but for some reason this date does
19 not seem correct to me.

20 Q. So it's possible it's a typo?

21 A. It's possible it's a typo, it's
22 possible it's correct, it's possible that it's
23 not correct.

24 Q. And you believe that that response
25 refers to the same single phone call that we

1 discussed earlier in this deposition.

2 Is that correct?

3 A. Yes, that is my recollection of the
4 phone conversation we had.

5 Q. In Exhibit 2, which is the Second
6 Amended Complaint, it looks like it -- paragraph
7 -- Page 39, and specifically Paragraph 185, do
8 you see the allegation there that says "The
9 defective condition of NIBCO PEX products
10 rendered them unreasonably dangerous"?

11 A. I do.

12 Q. Do you believe that the NIBCO products
13 in your home are unreasonably dangerous?

14 MR. KENNEY: Object to the extent it
15 calls for a legal conclusion or expert
16 testimony, but you can answer if you know.

17 A. I do. I told you, the plumbing system
18 in my house is a ticking time bomb.

19 Q. And you allege in Paragraph 186 that
20 the "NIBCO PEX products were expected to and did
21 reach consumers, including Monica, without
22 substantial change in the conditions in which
23 they were designed, manufactured, labeled, sold,
24 distributed, marketed, promoted, supplied and
25 otherwise released into the stream of commerce."

1 Do you see that allegation?

2 A. Yes.

3 Q. What is your basis -- your basis for
4 that allegation?

5 MR. KENNEY: Object to the extent it
6 calls for a legal conclusion. You can
7 answer if you know.

8 And I'd also like to point out that on
9 the first page it does say that the complaint
10 was drafted in part based on the
11 investigation of counsel.

12 A. Well, I observed Mr. Roman come to the
13 house with these new materials that were either
14 packaged in plastic or in boxes or the tubing
15 might have been on a wheel or something like
16 that, so they would seem new to me.

17 Q. Do you know where Mr. Roman got those
18 products that he brought to your house?

19 A. I told you before, I don't.

20 Q. Do you know how they were stored by
21 whomever he got them from?

22 A. I do not.

23 Q. Do you know how they were stored by
24 Mr. Roman before they -- from wherever he bought
25 them -- from the time when he bought them and

1 when they came to your house?

2 MR. KENNEY: Object to the form.

3 A. I do not.

4 Q. In addition to the types of damages
5 that you've mentioned earlier, the material and
6 labor, the down time, the carpentry work and the
7 associated property damage, are you claiming any
8 other damages from NIBCO in this lawsuit?

9 MR. KENNEY: Object to the extent it
10 calls for any legal conclusion or expert
11 testimony, but you can answer, if you know.

12 A. I'm not a professional product defect
13 attorney, but I am claiming whatever I'm entitled
14 to under the law.

15 Q. Can you itemize that for me?

16 A. No.

17 Q. Other than the carpet cleaning that
18 you mentioned, has any of -- are you claiming any
19 other personal property damage?

20 MR. KENNEY: Same objections, but you
21 can answer if you know.

22 Q. And, again, I'm not talking about the
23 damage to your home that was repaired by the
24 carpenter, for instance, I'm talking about
25 personal objects in your house.

1 MR. KENNEY: Same objections. You can
2 answer if you know.

3 A. Small items.

4 Q. Such as what?

5 A. Toys, books.

6 Q. Which toys, which books?

7 A. I have no idea.

8 Q. How much did those toys and books cost
9 you?

10 A. No idea.

11 Q. Have you replaced those toys and
12 books?

13 A. No.

14 Q. Do you still have those toys and books
15 in your possession?

16 A. No. They were soaked and I threw them
17 in the garbage; pillows.

18 Q. Let's look at Page 41.

19 Before we turn the page I just want to
20 point out that Count 5 references the New Jersey
21 Products Liability Act.

22 And you're a resident of New Jersey
23 and your home is in New Jersey.

24 Is that correct?

25 A. I believe you meant Count 4.

1 Q. I'm looking at Count 5.

2 MR. KENNEY: She changed the pages.

3 We're on Page 40 now.

4 A. Oh, yes.

5 Q. Sorry.

6 A. New Jersey Products Liability Act --

7 Q. Count 5 -- sorry to interrupt you.

8 Count 5 refers to the New Jersey

9 Products Liability Act, and at least in

10 Paragraph 192 it says, "Plaintiff Monica..."

11 Do you see that?

12 A. Um-hum, yes.

13 Q. And you're bringing a cause of action

14 under that act on behalf of yourself and on

15 behalf of members of the New Jersey subclass.

16 Do you see that?

17 A. I do.

18 Q. And in Paragraph 196 on the next page,

19 do you see in the third line in that paragraph

20 something about a post-sale warning?

21 Do you see that allegation?

22 A. I'm sorry, you said Paragraph 196?

23 Q. Correct. Go ahead and read that

24 paragraph and then I'll ask you a couple of

25 questions.

1 (Witness reviewing exhibit.)

2 A. Okay.

3 Q. So at least the first part of that
4 paragraph says, "NIBCO PEX products were
5 designed, manufactured, distributed, marketed,
6 promoted, supplied, and sold and otherwise
7 released by NIBCO into the stream of commerce
8 were defective due to inadequate post-sale
9 warnings and or instructions."

10 Do you see that?

11 A. I do.

12 Q. What post-sale warnings do you believe
13 NIBCO should have provided regarding its
14 products?

15 MR. KENNEY: I'm going to object to
16 the extent it calls for a legal conclusion or
17 expert testimony, but you can answer, if you
18 know.

19 A. I don't know.

20 Q. Where should NIBCO have provided those
21 warnings?

22 MR. KENNEY: Same objections.
23 You can answer, if you know.

24 A. Same answer. I don't know.

25 Q. What should that warning have said?

1 MR. KENNEY: Same objections again.

2 You can answer, if you know.

3 A. I do not know.

4 Q. If NIBCO had provided those warnings
5 after the sale -- after the NIBCO products were
6 installed in your home, what would you have done?

7 A. Can you rephrase the -- repeat the
8 question?

9 Q. Sure, okay. This mentions post-sale
10 warnings.

11 So after the NIBCO products were
12 installed in your home by Roman Plumbing, if
13 NIBCO had issued a warning regarding its NIBCO
14 PEX products, what would you have done
15 differently?

16 MR. KENNEY: Object to the form of the
17 question. You can answer.

18 A. Well, I just told you before that I
19 don't know what kind of warnings we would be
20 talking about, so you are asking me to speculate
21 about something that I don't know about.

22 I don't know.

23 Q. If NIBCO had issued a post-sale
24 warning, and by "post-sale" I mean after NIBCO
25 PEX products were installed in your home, stating

1 that some of its NIBCO PEX products could
2 prematurely fail, what would you have done?

3 MR. KENNEY: Object to the form of the
4 question. You can answer.

5 A. I don't know that I would have done
6 anything differently. I mean, I would have
7 probably been a little bit more aggressive of
8 pursuing NIBCO, possibly in my own lawsuit and
9 not part of a class, but I don't know.

10 Again, you're asking me to speculate
11 about something that I don't have knowledge of.

12 Q. What if that warning had been issued
13 and you were aware of it, a warning that --

14 A. I don't mean to interrupt you, but
15 just so that I'm clear, a warning that the
16 products could potentially be defective?

17 Is that what you're talking about?

18 Q. Prematurely fail.

19 A. Okay, go ahead.

20 Q. So the warning that I just mentioned
21 in my previous question, let's say that warning
22 was issued, you're aware of it, but you haven't
23 had any leaks in your home.

24 Would you have done something
25 differently?

1 MR. KENNEY: Again, object to the form
2 of the question. We're dealing with
3 incomplete hypotheticals, but you can answer
4 to the extent you know.

5 A. I don't know. Again, we're dealing
6 with hypotheticals. I think it would depend on
7 what the substance of the warning was, what would
8 happen. There's a lot of different variables.

9 I would have definitely taken some
10 more proactive steps.

11 Q. Such as what?

12 A. I would have more aggressively tried
13 to get the fittings replaced.

14 Here we are sitting in a class action
15 lawsuit, the class hasn't even been certified
16 yet, and we're talking about three or four years
17 later. I'm a pretty patient guy.

18 But if you had given me -- if NIBCO
19 had given me those warnings, then maybe I would
20 have been a little more aggressive.

21 But, again, you're asking me to
22 speculate about things that I don't know. I
23 don't know what I would have done differently.

24 (Ten Photographs of Pipes/Tubing, etc.
25 are received and marked as Exhibit Monica-8

1 for Identification.)

2 Q. I'm going to hand you what's been
3 marked as Monica Exhibit 8.

4 MS. STEPHENS: These are some
5 photographs that were produced to me
6 yesterday, so I've gone ahead and marked them
7 myself with Bates labels Cole-Monica 000014
8 through 23.

9 Q. Take a look at Exhibit 8 and let me
10 know when you're ready to answer questions.

11 (Witness reviewing exhibit.)

12 A. Okay.

13 Q. Do you recognize the photographs in
14 Monica Exhibit 8?

15 A. I do.

16 Q. Did you take all of these photographs?

17 A. I do not believe I took all of these.

18 I think some of these may have been
19 taken by Mr. Greenberg.

20 Q. By one of your attorneys?

21 A. Yes.

22 Q. Let's go through them one by one
23 starting with 14.

24 Did you take this picture?

25 A. I don't believe I did, no.

1 Q. Do you know when it was taken?

2 A. I don't.

3 Q. Do you believe it was taken by
4 Mr. Greenberg?

5 A. It could have either been taken by
6 Mr. Greenberg or it could have been taken by a
7 representative of New Jersey Manufacturers.

8 Q. And that's your insurance company that
9 we mentioned earlier?

10 A. Yes. My best guess is that these
11 pictures were taken by Mr. Greenberg when NIBCO's
12 experts came out and tested the water and took
13 pictures and all that other stuff of the house,
14 but I could be wrong about that.

15 Q. Do you recognize where this is in your
16 home?

17 A. I do.

18 Q. Where is this?

19 A. So remember earlier I was telling you
20 we had that curtained-off storage space.

21 Well, that's what that curtain is on
22 the right. You see the carpet and then the end
23 of the carpet there, and that object on the left
24 is my hot water heater -- I mean, I'm sorry, my
25 furnace.

1 And then the orange wall there, as I
2 said before, we painted the walls where -- where
3 they're showing.

4 Q. Do you know why this picture was
5 taken?

6 You kind of described to me what I'm
7 looking at, but I'm not sure that this is
8 supposed to be showing me any leak or --

9 A. It could be. The purpose of it was to
10 possibly show the water damage on the floor.

11 If you look at the first row of bricks
12 exposed there, that dark color, I believe that
13 was the reason why this was taken.

14 You could see that the water level
15 actually in this picture -- I know the reason
16 this was taken.

17 The water level in that picture, I
18 don't know if you can tell or not, is higher than
19 the bottom of the furnace, so water actually got
20 into the bottom of the furnace here.

21 Q. What about the next page, Monica --
22 Cole-Monica 15; is this picture also in your
23 basement?

24 A. Yes.

25 Q. Did you take this picture?

1 A. I did not.

2 Q. Do you believe Mr. Greenberg took this
3 picture?

4 A. I would say probably, yes, he did.

5 Q. And what is shown in this picture?
6 Generally describe it, please.

7 A. A wet carpet.

8 Q. And that's the bar you were referring
9 to right there that's in your basement?

10 A. Yes.

11 Q. On the right-hand side there's a bar
12 and there's carpet in the middle and we see some
13 kind of like footprints almost?

14 A. Yes.

15 Q. Do you know when this picture was
16 taken?

17 A. If it was, in fact, when I think it is
18 when Mr. Greenberg took it, it would have been on
19 the date when the NIBCO experts or whoever they
20 were, came out, and I believe that was at some
21 point in 2016.

22 No, that wouldn't have been -- that
23 wouldn't be right because we wouldn't have had a
24 leak then.

25 I'm sorry. This might have been taken

1 by New Jersey Manufacturers.

2 I really don't know. I didn't take
3 it, though.

4 Q. And so after -- since this picture has
5 been taken has your carpet in the basement been
6 cleaned?

7 A. Yes.

8 Q. So it doesn't look like this anymore?

9 A. No.

10 Q. What about Cole-Monica 16, the next
11 page, did you take this picture?

12 A. I do not believe I did, no.

13 Q. Do you recognize what area of your
14 home this is?

15 A. Yes.

16 Q. Where?

17 A. This is in the basement standing on
18 the floor and looking up into the ceiling.

19 Q. Do you believe this was taken, again,
20 by Mr. Greenberg or maybe New Jersey
21 Manufacturers?

22 A. Now that I'm thinking about it, I
23 believe these pictures were taken by New Jersey
24 Manufacturers except -- I'm really not sure; one
25 or the other.

1 Q. Okay. Do you know what's being
2 depicted in this picture?

3 It seems like this piece of red tubing
4 that's in the foreground is open on the end.

5 A. I would agree with you.

6 Q. Was that like a fitting removed from
7 that or is that an open line?

8 A. I think there was a fitting that was
9 being removed from that. It could either be
10 taking a picture of that, or if you look up at
11 thinner red tubing above it that has that elbow
12 fitting, you can see some of that white corrosion
13 or whatever that is, that substance that's
14 starting on that one, it could have been taken
15 for that.

16 Q. Okay. What about Cole-Monica 17, the
17 next page, do you know whose hand that is?

18 A. Yes, I do.

19 Q. Whose hand is that?

20 A. My wife's.

21 Q. And are you taking this picture or is
22 she?

23 A. I have no idea who took this picture.

24 Q. Do you know when it was taken?

25 A. It was either at the time New Jersey

1 Manufacturers came out or it was when NIBCO
2 experts came to do testing.

3 Q. When the New Jersey Manufacturers
4 representative came out, were you home?

5 A. I was.

6 Q. Do you know why this picture was taken
7 of this? I believe it's a crimp.

8 A. I don't. Maybe to show that it was
9 crimped properly. I don't know.

10 Q. And what about Cole-Monica 18?

11 Is that -- I believe, again, that's
12 your wife's hand. It's showing a clamp again
13 from a different angle?

14 A. Yes.

15 Q. And you think this was probably taken
16 during perhaps the same visit from New Jersey
17 Manufacturers?

18 A. Yeah, I believe so, yes.

19 Q. What about Cole-Monica 19, the next
20 page, do you know what part of your house this is
21 in?

22 A. I do.

23 Q. Where is this?

24 A. This is in the basement very close --
25 basement ceiling. Again, this is somebody

1 standing, probably in this case on a ladder,
2 taking a picture up into the ceiling, and this is
3 in an area very close to where my hot water
4 heater and my furnace are.

5 Q. Do you know when this picture might
6 have been taken?

7 A. Same response as with the other ones.

8 Q. New Jersey Manufacturers?

9 A. One of those two; either them or Bruce
10 Greenberg in 2016.

11 Q. Okay. What about Cole-Monica 20?
12 Do you recognize where in your house
13 that picture was taken?

14 A. Yes.

15 Q. Where is that?

16 A. Very similar area, I think, as the
17 previous picture, No. 19, just looking at it from
18 a different angle; again, in the basement
19 standing down taking a picture up at the ceiling.

20 Q. Okay. And the same response; taken
21 probably about the same time as the other photos?

22 A. Yes.

23 Q. What about Cole-Monica 21?

24 A. This one, I'm pretty sure, was taken
25 -- well, I don't want to guess. It's either,

1 again, when Mr. Greenberg came out with the NIBCO
2 experts or when New Jersey Manufacturers came
3 out.

4 Q. Do you know where this -- now
5 Cole-Monica 21 shows a T-fitting connection.

6 Would you agree with me?

7 A. Yes.

8 Q. And it's got some tubing and clamps
9 still on it and it's got that white substance
10 we've been talking about?

11 A. Agreed.

12 Q. Do you know where this T-fitting came
13 from in your home?

14 A. I believe this was one of the ones
15 that came out of the family room ceiling between
16 the first and second floors.

17 Q. Was this picture -- do you know if
18 this picture was taken at your house?

19 A. Yes. That background material there
20 is the granite on my kitchen countertop.

21 Q. And it's in a plastic bag.
22 Did you put it in a plastic bag?

23 A. I believe I did.

24 Q. And what about Cole-Monica 22, is that
25 the same fitting just a different angle?

1 A. Yes.

2 Q. Did you take that photo?

3 A. I believe that's my hand.

4 Q. That was going to be my next question.

5 So it's possible you took Cole-Monica 21 and

6 Cole-Monica 22?

7 A. I was going to say -- I didn't want to
8 prematurely say it, but I think I took 21 and 22.

9 Q. And you think that's the same
10 T-fitting that's in 21, just from a different
11 angle looking into the pipe?

12 A. Yes.

13 Q. And then the last picture is
14 Cole-Monica 23.

15 Do you know if you took this
16 particular picture?

17 A. I couldn't say for certain.

18 I may have.

19 Q. And this, again, appears to show a
20 T-fitting, but it's actually still actively
21 installed in the system.

22 Would you agree?

23 A. Right. This is when I -- when I
24 testified before of when I would consider ready
25 to burst, this would be an example of one of

1 them.

2 Q. Do you know -- can you tell from this
3 picture where this is in your house?

4 A. Yes.

5 Q. Where is this?

6 A. I believe this is the same fitting
7 that's in picture 21 and 22 before it was
8 removed.

9 So I believe that this is in the --
10 inside the wall -- inside the ceiling wall of the
11 family room.

12 Q. So would this have been the fitting
13 removed by Michael Palazzo?

14 A. No. This would have been probably --
15 not probably -- this would have been Caprarola.

16 Q. So one of -- like leak 4 or 5 was kind
17 of how which we're numbering them.

18 A. Yes. So you see the partition there
19 in the wall where one of the tubes is going away
20 from you?

21 Q. I do.

22 A. The other one was just kind of down
23 the pipe there a few feet from that one.

24 Q. Okay. All right. Thank you.

25 MS. STEPHENS: I'm going to take a

1 quick break and go over my notes and see what
2 else I have.

3 (Recess.)
4

5 BY MS. STEPHENS:

6 Q. We're back on the record.

7 Mr. Monica, you understand you're
8 still under oath?

9 A. Yes.

10 Q. Do you know whether your house has a
11 pressure release valve?

12 A. I know what a pressure reducing valve
13 is. I don't know whether we have one or not.

14 Q. Was that something you ever discussed
15 with Richard Roman or Roman Plumbing?

16 A. I think at one point we did talk about
17 -- very briefly about the shower pressure. I was
18 worried about that.

19 And my electrician, actually -- again,
20 he's a family friend of ours -- he did a test on
21 the water pressure with like a testing machine
22 that you basically leave onto your hose outside
23 plugged in overnight for 24 hours and it marks
24 the highest that the pressure gets, and we did
25 that, and the water pressure was normal.

1 Q. When was that test done?

2 A. That was probably done slightly before
3 the original complaint was filed, maybe as much
4 as six months before then.

5 Q. So maybe sometime in 2013?

6 A. Yeah, it was around the time where we
7 noticed that there were problems with the
8 plumbing but just couldn't figure out what or
9 where or why it was happening, and that was one
10 of the things that my electrician said, "Hey,
11 let's -- you now, I have this cool little tool.
12 Let's test the water pressure."

13 Q. If you -- now, my understanding is
14 that, again, the plumbing in your home that was
15 installed remains in place other than the repairs
16 that we discussed today.

17 Is that correct?

18 A. That's correct.

19 Q. And the water heater, that's also been
20 replaced. Is that correct?

21 A. That's correct.

22 Q. If you replaced the plumbing in your
23 home, what would you replace it with?

24 A. Now?

25 Q. Yes.

1 A. I couldn't say for certain.

2 Q. What would you like to replace it
3 with?

4 A. Well, I would probably do some more
5 research this time and see what the -- I would
6 want to -- I probably wouldn't use the newest
7 latest greatest thing. I would want to use
8 something that's kind of been standing the test
9 of time and that's reliable.

10 I don't know what kind of material it
11 would be. I would have to talk to a couple of
12 plumbers.

13 Q. Possibly copper?

14 A. I don't know. I'd have to talk to
15 some plumbers and do some research.

16 MS. STEPHENS: Those are all the
17 questions I have today, Joe, but I'm going to
18 leave Mr. Monica's deposition open because
19 he's mentioned various documents that may
20 exist and things like that, that I don't
21 believe we have.

22 We also have these questions about
23 this New Jersey Manufacturers claim, whether
24 it was made or not.

25 So I'm going to request some further

1 documents through subpoena and otherwise and
2 I might recall him to finish his deposition.

3 MR. KENNEY: Understood. And I have a
4 few questions actually.

5

6 CROSS-EXAMINATION BY MR. KENNEY:

7

8 Q. Would you go back to Exhibit 5 for me?

9 I just want to clarify a few things
10 for the record.

11 And that's a copy of the complaint.

12 MS. STEPHENS: So that's Exhibit 2.

13 Oh, you mean the complaint with Roman?

14 MR. KENNEY: Sorry, yes, the complaint
15 filed against Roman Plumbing.

16 (Witness reviewing exhibit.)

17 A. Okay.

18 Q. So in a lawsuit you filed against
19 Roman Plumbing & Heating and Richard Roman, did
20 you allege that they improperly installed the
21 NIBCO PEX tubing fittings and/or clamps?

22 A. I did not.

23 Q. Did you file the lawsuit because you
24 believed they improperly installed the NIBCO PEX
25 tubing fittings and/or clamps?

1 A. No.

2 Q. Have you ever had any reason to
3 believe that they improperly installed the NIBCO
4 PEX tubing, fittings and/or clamps?

5 A. No.

6 Q. And has anybody ever communicated to
7 you that Roman Plumbing & Heating did not
8 properly install the NIBCO PEX tubing, fittings
9 and/or clamps?

10 A. No.

11 MR. KENNEY: That's it for me.

12 And we'll do a read and sign.

13 (Deposition adjourned 12:15 p.m.)

14 (Exhibits retained for copy.)

15 (Witness to read and sign.)

16

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C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by and before me stenographically at the time and place aforementioned.

I FURTHER CERTIFY that I am neither attorney for nor counsel to any of the parties; parties of any of the attorneys in this action; and that I am not financially interested in the outcome of this case.

Dated: November 30, 2016

Susan Gioffre

SUSAN GIOFFRE, CCR
License No. XI001220
Notary Public of the State of New Jersey

JAMES MONICA

November 29, 2016

Page 170

1 Job No. 539335

2 -----

3 DEPOSITION OF JAMES MONICA, 11/29/2016

4 -----

5 CASE NAME: KIMBERLEY COLE, et al. vs. NIBCO, INC.

6 -----

7 I, James Monica, being first duly
8 sworn, on oath, say that I am the witness in the
9 aforesaid statement, that I have read the
10 foregoing transcript of my deposition taken at
11 the aforesaid time and place and that the
12 foregoing is a true and correct transcript of my
13 testimony so given.

14

15 _____ Corrections have been submitted

16 _____ No corrections have been submitted

17

18

19 JAMES MONICA

20

21 SUBSCRIBED AND SWORN TO

22 before me this _____ day

23 of _____ A.D., 201_.

24 _____

25 Notary Public

JAMES MONICA

November 29, 2016

Page 171

ERRATA SHEET

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JAMES MONICA

JAMES MONICA

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